

IN RE: PETITION FOR SPECIAL HEARING
SW/S Falls Road, 2000' S of
the c/l of Benson Mill Road
(15906 Falls Road)
5th Election District
3rd Councilmanic District

Dennis G. McGee and
Thomas R. Curtis, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-289-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In what might aptly be titled Chapter IV of the ongoing saga of Dennis G. McGee and 15906 Falls Road, this matter comes before me as a Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit to construct a single family residence on the subject property. The Petition is jointly filed by Dennis G. McGee, Owner/Contract Purchaser, and Thomas R. and Dorothy Curtis, Owners of one of the lots to be combined. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite hearing held for this case were Dennis G. McGee and his attorney, Hurst R. Hessey, Esquire. Also present were Thomas and Dorothy Curtis, and Kristen Forsyth, a representative of the Valleys Planning Council (VPC), which supports the relief requested. There were no Protestants present.

Mr. McGee has been before this Office on several occasions relating to the subject property and the history of this site is well-documented. Originally, this property was part of a larger tract owned by Mr. Curtis' parents. Apparently, the elder Mr. & Mrs. Curtis acquired the site in the 1930s and originally owned approximately 14.62 acres. In 1971, Mrs. Curtis then a widow, conveyed 1.45 acres of the site to her son, Thomas R. Curtis.

ORDER RECEIVED FOR FILING
Date 3/18/96
By [Signature]

MICROFILMED

Mr. Curtis and his wife, Dorothy, ultimately improved the site with a single family dwelling which is their residence today. In 1973, Mrs. Curtis made a second conveyance. At that time, she transferred a small strip of land approximately .7 acres in area, to the Baltimore Gas and Electric Company (BGE). That transfer was for the purpose of providing that utility with acreage to construct a transmission line.

By 1979, Mrs. Curtis held approximately 12 acres total. In November, 1979, the Baltimore County Council adopted the R.C. zoning classification and comprehensively amended the Baltimore County Zoning Regulations (B.C.Z.R.). ~~The property was thereafter zoned R.C. 2, a~~ designation which continues to this date. Under that zoning classification, the 12 acres Mrs. Curtis then owned could be subdivided one time. That is, the R.C. zoning classification allows a single subdivision of a 12-acre tract, so as to permit two building lots, or two density units.

Mrs. Curtis passed away in 1983 and under the terms of her will, directed that each of her three children split the 12 acres. In compliance with the terms of the will, but contrary to the B.C.Z.R., the site was thereafter subdivided into three lots. One lot was deeded to George S. Kohler, a son, who subsequently developed that lot with a single family residence where he presently resides. A second lot was bequeathed to the aforementioned Thomas R. Curtis and Dorothy Curtis. This lot abuts the property Mr. & Mrs. Curtis previously acquired and improved. A third lot, containing approximately 4 acres, was left to another child, and following a series of transfers, was subsequently acquired by Mr. McGee.

In 1990, Mr. McGee came before then Deputy Zoning Commissioner Ann Nastarowicz, through a Petition for Special Hearing (Case No. 90-62-SPH), seeking to improve his property with a single family dwelling. Deputy

Commissioner Nastarowicz denied the request and outlined the history of the site. She noted that only two density units were allowed for the original 12 acre parcel and that Mr. Kohler had utilized one of those density units when he constructed his dwelling on his property. She also concluded that the subdivision by Mrs. Curtis' will was illegal under the B.C.Z.R. Moreover, in that Mr. & Mrs. Thomas Curtis were not parties to the Petition for Special Hearing, she reasoned that relief must be denied. On appeal, by Order of August 21, 1990, the County Board of Appeals agreed.

Rebuffed in his initial attempt to obtain relief, Mr. McGee tried a different approach in 1991. At that time, he came before the Board of Appeals on a Petition for Reclassification seeking a redesignation of the zoning for his property from R.C. 2 to R.C. 5. The purpose of this Petition was to enable Mr. McGee to construct a single family dwelling on his lot. The Board of Appeals in its written decision reviewed the history of the property and denied the relief requested.

Hoping that the third time would indeed be the charm, Mr. McGee returned with a Petition for Special Hearing before me in 1994. In that Petition, Mr. McGee attempted to utilize a right of subdivision from the .7 acre parcel conveyed to the Baltimore Gas and Electric Company by the elder Mrs. Curtis. In effect, Mr. McGee argued that a right of subdivision was available to him in that BGE had not utilized the .7 acre parcel for residential purposes. For reasons set forth in my opinion, I denied the Petition for Special Hearing. In a split decision, the Board of Appeals concurred.

Frustrated in these three attempts, Mr. McGee now tries again. Fortunately for him, he will now succeed. Mr. McGee has entered into a contract of sale with Thomas R. and Dorothy Curtis to purchase a portion

ORDER RECEIVED FOR FILING

Date

By

of the 4 acres of property acquired by them under the terms of the Last Will and Testament of Mrs. Bessie Curtis. (See Petitioner's Exhibit 2) Specifically, Mr. McGee will acquire 2.544 acres. Coupled with his previous holdings, he will now own approximately 6.5 acres of the original 12 acre tract. Mr. & Mrs. Curtis will retain the remaining 1.45 acres of the land bequeathed to them, in addition to the original 1.45 acres on which their residence is located. More importantly, from Mr. McGee's perspective, it is agreed by and between the parties that Mr. McGee will acquire the single right of subdivision which remains available to the 12-acre tract. As noted above, Mr. Kohler previously utilized one right of subdivision to create his lot and erect a dwelling thereon. The second right of subdivision will be utilized on the original McGee property of 4 acres, coupled with his new acquisition of 2.544 acres. It is agreed by all parties that the balance of property bequeathed to Mr. & Mrs. Curtis and retained by them is "non-density". That is, that parcel cannot be used now or in the future to support any dwelling or right of subdivision.

Clearly, a grant of the special hearing relief will end this difficult episode in a fair and equitable manner. The utilization of the overall 12-acre tract will be in accordance with the B.C.Z.R. Two dwellings will be constructed on the gross acreage, one by Mr. Kohler, and one by Mr. McGee. Moreover, Mr. & Mrs. Curtis' home is exempt from consideration in this regard, in that their property was acquired prior to November, 1979. It is clear that a grant of the special hearing is consistent with the B.C.Z.R., as well as the use and characteristics of the surrounding neighborhood. In my judgment, a grant of the special hearing will not be detrimental to the health, safety or general welfare of the locale and should, therefore, be approved.

ORDER RECEIVED FOR FILING

Date

3/8/76

By

By

FILED

As a final issue, it is to be noted that Zoning Plans Advisory Committee (ZAC) comments were received from member agencies. Most of the comments were neutral; however, there was a recommendation from the Development Plans Review Division of the Department of Public Works regarding the proposed construction of Mr. McGee's dwelling and the means of vehicular access thereto. That comment shall be incorporated herein as a condition to the relief granted.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held and for the reasons set forth above, the relief requested in the Petition for Special Hearing shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of March, 1996 that the Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit to construct a single family residence on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- 2) Pursuant to Section 502.2 of the B.C.Z.R., a new deed incorporating a reference to this case and the restrictions and conditions set forth herein shall be recorded among the Land Records of Baltimore County within sixty (60) days of the date of this Order and a copy of the recorded deed shall be forwarded to the Zoning Commissioner for inclusion in the case file.
- 3) Compliance with the Zoning Plans Advisory Committee comment submitted by the Development Plans Review Division of the Department of Public Works dated February 20, 1996, a copy of which is attached hereto.

ORDER RECEIVED FOR FILING

Date

By

RECORDED

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

5) The balance of the property inherited by Thomas R. Curtis and retained by him, computed to be approximately 1.45 acres, shall be hereinafter considered a non-density parcel, and cannot be utilized to support further residential development.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING

Date 3/18/96

By [Signature]

RECEIVED

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

March 18, 1996

Hurst R. Hessey, Esquire
36 S. Charles Street, Suite 2400
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING
SW/S Falls Road, 2000' S of the c/l of Benson Mill Road
(15906 Falls Road)
5th Election District - 3rd Councilmanic District
Dennis McGee - Petitioner
Case No. 96-289-SPH

Dear Mr. Hessey:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Dennis G. McGee
3728 Ballahack Road, Chesapeake, Va. 23322

Edward C. Covahey, Jr., Esquire
Covahey & Boozer, 614 Bosley Avenue, Towson, Md. 21204

Mr. & Mrs. Thomas R. Curtis, 15902 Falls Road, Sparks, Md. 21152

Ms. Kristen Forsyth, VPC, P.O. Box 5402, Towson, Md. 21285-5402

People's Counsel; Case File





Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at

⁹
15806 Falls Road

which is presently zoned RC2

96-289-SPH

This Petition shall be filed with the Department of Permits & Development Management

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

their request to combine 2 lots for the purpose of obtaining a building permit for single family residential unit construction.

SEE ATTACHED ADDENDUM

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

(Note: By Agreement, McGee will pay these expenses)

Contract Purchaser/Lessee

N/A

(Type or Print Name)

Signature

Address

City

State

Zipcode

Legal Owner(s).

Dennis G. McGee

(Type or Print Name)

Signature

Thomas R. Curtis & Dorothy Curtis

(Type or Print Name)

Signature

3728 Ballahack Road

Address

804-421-4360

Phone No

Chesapeake, Virginia 23322

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

Hurst R. Hessey, Esquire (Atty. for McGee)

Name Hessey & Hessey, P.A.

36 S. Charles Street- Suite 2400

Address

Baltimore, MD

21201

410-539-3300

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

R.I.

DATE

1-30-96

ITEM 289

ORDER RECEIVED FOR FILING

Date



Revised 9/5/95

MICROFILMED

96-289-SPH

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 W/S Falls Road, 2500' S of
 Benson Mill Road * ZONING COMMISSIONER
 (15906 Falls Road)
 5th Election District * OF BALTIMORE COUNTY
 3rd Councilmanic District * CASE NO.: 94-42-SPH

* * * * * * * * * *

ADDENDUM TO PETITION

Petitioner, Dennis G. McGee, by his attorney, Hurst R. Hessey, respectfully submits this
~~Addendum to the Petition for Special Hearing submitted jointly by him and Thomas Curtis and~~
Dorothy Curtis, his wife, individually and on behalf of Gretchen Hundertmark, Minor
(collectively, "Curtis").

Petitioner, Dennis G. McGee, owns a tract of land located in the 3rd Councilmanic District, 5th election district, Baltimore County, consisting of 4.00 acres, more or less, known generally as 15906 Falls Road (the "Property"). Curtis owns a contiguous lot of ground, all as more set forth on the Plat accompanying this Petition.

The history of the Property is somewhat complicated. The subject Property was part of a 12.00 acre tract (the "Tract") zoned R.C. 2 located off Falls Road. The Property consists of 4.00 acres which Petitioner purchased from Michael Lee ("Lee") by deed dated November 7, 1986. At the time of the purchase, Lee represented to Petitioner that the Property was a buildable lot, and Petitioner subsequently obtained all necessary financing for the construction of a home. However, upon application for building permit approval by the Zoning Office, he was advised that the subdivision of the 12.00 acre Tract into the three lots was an illegal subdivision, as the R.C.-2 classification permits subdividing into only two lots.

MICROFILMED

ITEM 281

In 1932, by deed dated March 15, 1932, the 12.00 acre Tract and an additional 2.00 acres, more or less, were purchased by Levi and Bessie Curtis. Subsequently, by deed dated May 6, 1971, Bessie A. Curtis, then a widow, transferred 1.451 acres of the 14.00 acres, more or less, to her son, Thomas Curtis and Dorothy R. Curtis, his wife. Thereafter, .7 acres of the remaining acreage was acquired by Baltimore Gas and Electric Company in 1973. After this conveyance to Baltimore Gas and Electric Company, there remained only the 12.00 acre Tract. Bessie Curtis passed away in February, 1983, and by will divided the Tract among her three children. On August 17, 1984, the three children filed a deed in lieu of partition in the Land Records of Baltimore County dividing the remaining 12.00 acre Tract illegally into three parcels. Since 1984, there has been no construction on any of the three parcels. One parcel was given to a daughter, Martha Kohler, who has since passed away. She left that parcel to Thomas Curtis' daughters. The second parcel was deeded to Thomas Curtis, the owner of an adjoining tract of land, not part of the 12 acre Tract, and the third parcel was deeded to Martha Kohler as Trustee for her brother, Harry Curtis. It is this third parcel (the "Property") that was subsequently sold in 1984 to Petitioner's predecessor in interest, Lee.

After failing to obtain a building permit for the Property, Petitioner filed a Petition for Special Hearing (case No.: 90-62-SPH) which essentially requested that the division of the Tract be resolved in such a way that would enable Petitioner to get his building permit. The Commissioner denied Petitioner's request, primarily due to the failure of Thomas Curtis to agree to transfer his interest in any existing density unit related to his land, and his failure to take any other action that would alleviate Petitioner's problem.

Petitioner appealed the decision of the Commissioner to the County Board of Appeals. After a hearing before the Board on August 17, 1990, the Board denied the Petitioner's request, once again finding Thomas Curtis' action was necessary, but not forthcoming.

The Board further found, as did the Commissioner, that the division of the Tract into three lots was an illegal subdivision in violation of Section 1A01.3 of the B.C.Z.R. As a result, the Petitioner sought a change in the zoning of the Property from R.C.2 to R.C.5. The Board of Appeals denied this request.

Petitioner then sought to contract with BG&E for the purchase of the BG&E Lot, which contract was contingent upon (i) approval by the Zoning Commissioner combining the BG&E Lot with the Property and transferring the density unit theretofore belonging to the BG&E Lot. The Zoning Commissioner granted the relief requested by the Petitioner; however, the decision was overturned by the County Board of Appeals on appeal. Again, the Petitioner was thwarted.

The Petitioner's request relating to the BG&E Lot was opposed by the Valleys Planning Council ("VPC"). VPC suggested that the Petitioner had numerous other alternatives to the consolidation with the BG&E Lot, including (i) making a claim against Lee under Baltimore County Code, § 22-44, (ii) joining Thomas Curtis in a hearing before the Zoning Commissioner to compel transfer of the density unit, and (iii) otherwise getting Thomas Curtis to agree that McGee should be entitled to utilize the remaining density unit (and building permit) that remains available to the Tract.

A claim against Lee is impossible. Lee filed bankruptcy in the Middle District of Pennsylvania, Case No. 1-9-1691, and the debt is discharged. Compelling Thomas Curtis to transfer his rights in the Density Unit was twice attempted and twice rejected, as stated above.

96-289-SPH

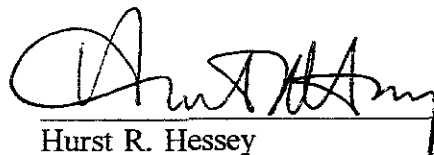
Consequently, item (iii) above is the only available avenue to redress the Petitioner, Dennis G. McGee.

In furtherance of item (iii) above, Dennis G. McGee has entered into a contract of sale ("Contract") for the purchase of approximately two acres owned by Curtis and the transfer of the Density Unit applicable thereto. The Contract is attached as Exhibit A. Pursuant to the Contract (and the recommendation of VPC), McGee and Curtis are jointly requesting the relief set forth in this Petition for Special Hearing.

Petitioner has spent considerable sums of money in relying on Lee's representations concerning the ability to build on the Property. The acquisition price of the Property was in excess of \$34,000.00, a cost clearly anticipating a buildable lot. Further, Petitioner spent thousands of dollars in legal fees, professional fees, surveying expenses and other expenses in attempting to obtain a building permit and securing financing. Without the ability to build on the Property, Petitioner will suffer a severe loss through no fault of his own. The Contract calls for McGee to spend an additional \$38,000 for the acquisition of a portion of the Curtis' lot, plus engineering expenses expected to exceed \$12,000.

Accordingly, the Petitioners, Dennis G. McGee and Curtis, request that their Petition for Special Hearing be granted.

Respectfully submitted,



Hurst R. Hessey
Attorney for Petitioner,
Dennis G. McGee
Hessey & Hessey, P.A.
36 South Charles Street
Suite 2400
Baltimore, Maryland 21201
(410) 539-3300

[FAWPD\MCGEEMCGEE.ATP]

FORWARDED

ITEM 289

ZONING
DESCRIPTION FOR
SPECIAL HEARING
FOR
DENNIS G. McGEE
5TH ELECTION DISTRICT
3RD COUNCILMATIC DISTRICT
BALTIMORE COUNTY, MARYLAND

96-289-S PH

t

BEGINNING for the same at a point distant, South 45° 30' 20" West, 659 feet more or less and southerly, 2000 feet more or less from the intersection of the centerline of Maryland Route 25 (Falls Road) and Benson Mill Road, thence running the twelve (12) following courses, viz.:

- (1) South 44° 04' East, 232.5 feet more or less
- (2) South 45° 30' West, 190 feet
- (3) South 44° 30' East, 340.3 feet more or less
- (4) South 31° 05' 20" West, 74.8 feet
- (5) South 33° 40' 20" West, 271 feet
- (6) North 58° 19' 40" West, 30 feet
- (7) North 31° 49' 40" West, 550 feet
- (8) North 33° 39' 40" West, 370 feet
- (9) North 23° 39' 40" West, 45 feet more or less
- (10) North 47° 35' 20" East, 218 feet more or less
- (11) South 36° 09' 40" East, 327 feet, and
- (12) North 45° 30' 20" East, 158 feet to the place of beginning, containing 6.544 acres or 285,057 square feet of land more or less. Also known as No. 15906 and part of No. 15900 Falls Road.

NOTE: This description is for zoning purposes only and is not to be used for the conveyance of property.

MICROFILMED

ITEM 289

96-289-SPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 5th Date of Posting _____
Posted for: Special Hearing
Petitioner: Mc Gee and Curtis
Location of property: 15906 Falls Rd

Location of Sign: _____

Remarks: _____
Posted by Mark Sawel Date of return: _____
Signature
Number of Signs: _____



✓
Post by: 2/20/96

CASE NUMBER: 96-289-SPH (Item 289)

15906 Falls Road

point of beginning SW 650'+/- from c/l Falls Road, 2000'S from c/l

Benson Mill Road

5th Election District - 3rd Councilmanic

Legal Owner: Dennis G. McGee and Thomas R. Curtis and Dorothy Curtis

Special Hearing to combine 2 lots for the purposes of obtaining a
building permit for single family residential unit construction.

HEARING: WEDNESDAY, MARCH 6, 1996 at 10:00 a.m. in Room 106, County
Office Building.

FILED

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

ITEM # 289
No. C13767

96-289-SPH

DATE 1-30-96 ACCOUNT R-07-6150

130 - SPH - TWO LOTS - 120⁰⁰

CSO - 1 - SIGN - 25⁰⁰ AMOUNT \$ 135⁰⁰

RECEIVED
FROM:

HESSEY

FOR:

SPECIAL HEARING (TWO LOTS)

~~NOT RECORDED~~
Reg.

01A0048009MCHRE

6135.00

BA 0009151AND1-30-96

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 289 Petitioner: _____

Location: _____

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Hurst R. Hessey, Attorney for Petitioner

ADDRESS: 36 S. Charles Street, Suite 2400

Baltimore, MD 21201

PHONE NUMBER: (410)539-3300

MICROFILMED





Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 12, 1996

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-289-SPH (Item 289)

15906 Falls Road

point of beginning SW 650'+/- from c/l Falls Road, 2000'S from c/l Benson Mill Road

5th Election District - 3rd Councilmanic

Legal Owner: Dennis G. McGee and Thomas R. Curtis and Dorothy Curtis

Special Hearing to combine 2 lots for the purposes of obtaining a building permit for single family residential unit construction.

HEARING: WEDNESDAY, MARCH 6, 1996 at 10:00 a.m. in Room 106, County Office Building.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: Hurst R. Hessey, Esq.
Dennis G. McGee
Thomas and Dorothy Curtis
Edward C. Covahey, Jr., Esq.

- NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 28, 1996

Edward C. Covahey, Jr., Esquire
Covahey & Boozer, P.A.
614 Bosley Ave.
Towson, MD 21204

RE: Item No.: 289
Case No.: 96-289-SPH
Petitioner: D. G. McGee

Dear Mr. Covahey:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on January 30, 1996.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Carl Richards, Jr.", is written over a faint, larger version of the same signature.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)



RECEIVED

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Feb. 20, 1996
Zoning Administration and Development Management

FROM: *Sub* Robert W. Bowling, P.E., Chief
Development Plans Review Division

RE: Zoning Advisory Committee Meeting
for February 20, 1996
Item No. 289

The Development Plans Review Division has reviewed the subject zoning item. The means of access to the residential subdivision must follow the physical standards for a panhandle lot per Dept. of Public Works Standard Plate R-47, Detail "A" - a 10-inch thick driveway section (2-inch Bituminous Concrete over 8-inch Base Course) at a width of 12 feet.

A 100-year flood plain runs along the Indian Run property line. The Developer must not construct the rear of the building within 20 feet of the limits of the flood plain as established for the 100-year flood level with a 1 foot freeboard. See Plate 19D in the Baltimore County Design Manual, dated 1982 and adopted 1983.

RWB:sw

7-10-85

Baltimore County Government
Fire Department



700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 02/14/96

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF FEB. 12, 1996.

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 286, 287, 288, 289, 290,
292 AND 293.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

RECEIVED



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits and Development
Management

DATE: February 12, 1996

FROM: Pat Keller, Director
Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning has no comments on the following petition(s):

Item No. 289

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by:

Jeffrey W. Long

Division Chief:

Carol L. Kerns

PK/JL

MICROFILMED



**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Hal Kassoff
Administrator

2-14-96

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 289 (RT)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance ~~(s)~~ onto MD/ ~~28~~ #25 is ~~are~~ acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Bob Small at 410-333-1350 if you have any questions. Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

Ronald Burns, Chief
Engineering Access Permits
Division

BS

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B A L T I M O R E C O U N T Y, M A R Y L A N D

I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Lawrence E. Schmidt
 Zoning Commissioner

DATE: November 4, 1997

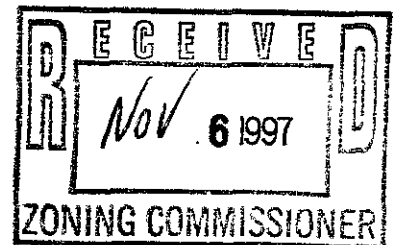
FROM: *RWB* Robert W. Bowling, Chief
 Bureau of Developer's Plans Review
 Department of Permits &
 Development Management

SUBJECT: Zoning Case #96-289

 We have re-reviewed this zoning case and have determined the means of access via an eight-inch thick stone driveway is acceptable considering the proposed lots are both greater than three acres.

RWB:HJO:jrb

cc: File



HJO23

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
15906 Falls Road, Point of beginning SW		
650'+/- from c/l Falls Road, 2000'S	*	ZONING COMMISSIONER
from c/l Benson Mill Road, 5th		
Election District, 3rd Councilmanic	*	OF BALTIMORE COUNTY
Dennis McGee, Thomas and Dorothy Curtis	*	CASE NO. 96-289-SPH
Petitioners		
* * * * *		

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

Carole S. Demilio

 CAROLE S. DEMILIO
 Deputy People's Counsel
 Room 47, Courthouse
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 1996, a copy of the foregoing Entry of Appearance was mailed to Hurst R. Hessey, Esquire, 36 S. Charles Street, Suite 2400, Baltimore, MD 21201, attorney for Petitioner Dennis G. McGee, and a copy was mailed to Edward C. Covahey, Jr., Esquire, 614 Bosley Avenue, Towson, MD 21204, attorney for Petitioners Thomas and Dorothy Curtis.

Peter Max Zimmerman

 PETER MAX ZIMMERMAN

PETITION PROBLEMS

#286 — MJK

1. Need attorney - legal owner is incorporated.

#287 — JRF

1. Need typed or printed name of person signing for legal owner.
2. Need typed or printed title of person signing for legal owner.
3. Need authorization for person signing for legal owner.
4. Need telephone number for legal owner.
5. Need typed or printed name of person signing for contract purchaser.
6. Need typed or printed title of person signing for contract purchaser.
7. Need authorization of person signing for contact purchaser.

#289 — RT

1. Need attorney's signature.

4/13/2011

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: January 30, 1996

TO: Hearing Officer

FROM: Regulo Tanguilig
Planner I
Zoning Review, PDM

SUBJECT: Item #289
15906 Falls Road

RSD-10 to be submitted two weeks prior to hearing, per applicants.
Attached previous hearing case #90-62-SPH.

RT:scj

HESSEY & HESSEY, P.A.

ATTORNEYS AT LAW

2400 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3193
(410) 539-3300
FAX (410) 539-3305

96-794
Sophie
2/28/96
To File

February 27, 1996

Baltimore County-Department of
Permits & Development Management
111 West Chesapeake Avenue
Room 111
Towson, Maryland 21204
Attn: Ben

Re: Dennis G. McGee
Case No.: 96-289-SPH (Item 289)

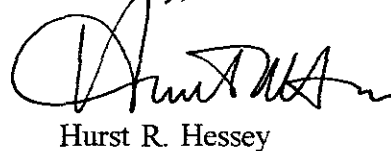
Dear Ben:

Per your request when I filed on behalf of Mr. McGee the Petition for Special Hearing in the captioned matter on January 30, 1996, enclosed is color coded plat for the assistance of the zoning office and hearing officer.

The hearing is set for March 6.

If you require anything further, please do not hesitate to contact me.

Sincerely,

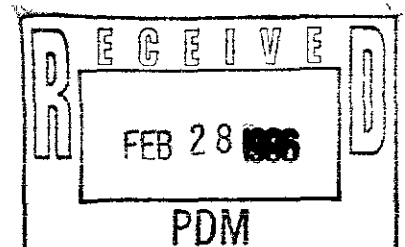

Hurst R. Hessey

HRH:rmf

encl.

cc: Mr. Dennis G. McGee

[F:\WPDM\MCGE\BCDPDMLE.227]



IN THE MATTER OF THE	*	BEFORE THE
APPLICATION OF DENNIS G. MCGEE	*	COUNTY BOARD OF APPEALS
FOR A SPECIAL HEARING ON	*	OF
PROPERTY LOCATED ON THE WEST	*	BALTIMORE COUNTY
SIDE OF FALLS ROAD, 2500'	*	
SOUTH OF THE CENTERLINE OF	*	
BENSON MILL ROAD (15906 FALLS	*	CASE NO. 90-62-SPH
ROAD)	*	
5TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT	*	
* * * *	*	

OPINION

This is an appeal from the decision of the Deputy Zoning Commissioner's Order dated January 11, 1990 wherein Petitioner's Special Hearing request was denied. Specifically, the Petitioner is requesting non-density transfer of 4.00 acres to an adjoining property owner and to establish not more than two (2) lots from a 12.00 acre parcel in an RC-2 zone. The appeal to this Board is de novo. This decision is based upon the evidence and testimony presented to this Board including the stipulation of facts, proffers of testimony made by the Appellant and exhibits filed herein.

The Appellant appeared and testified in these proceedings represented by Counsel, Hurst R. Hessey, Esquire. Petitioner also produced the testimony of Michael B. Dallas, a registered surveyor, who offered the plat of the subject property into evidence as Petitioner's Exhibit No. 1. Deputy People's Counsel, Peter Max Zimmerman, Esquire, also participated in these proceedings and offered the testimony of Wallace S. Lippincott, Jr., Community Planner with the Office of Planning and Zoning.

The subject property is known as 15906 Falls Road and consists of part of a 12-acre tract presently zoned RC-2 located off of

Falls Road in northern Baltimore County. The Board has designated this property as Parcel 3 on Petitioner's Exhibit No. 1. This parcel is four (4) acres in size, which was purchased by the Petitioner in November, 1986. The proffers made to this Board indicate that the Petitioner believed he was purchasing a buildable lot at the time of purchase since it had passed percolation and had a well already in place. It was when he made application for a building permit approval that he was informed by County authorities that his parcel was part of an illegal subdivision of the 12 acres into three (3) separate lots since an RC-2 zoning classification only permits two (2) lots. Petitioner offered into evidence an agreed stipulation of facts which sets out the history of the 12-acre tract, its subdivision, and the various deeds transferring interests to parts of the property. This history is also set out in the opinion of the Deputy Zoning Commissioner dated January 11, 1990. It is clear to this Board and also agreed to by Counsel that the subdivision of the property into three (3) lots was an illegal subdivision in violation of Section 1A01.3 of the Baltimore County Zoning Regulations (BCZR).

Because the property is zoned RC-2, only two (2) density units under the Zoning Regulations are permitted on the entire property consisting of 12 acres. The Petitioner is desperately requesting that he receive relief from this Board to permit him to build on his lot. Unfortunately, this Board cannot grant the relief requested by the Petitioner in these proceedings.

Mr. Wallace S. Lippincott, Jr. of the Office of Planning and

Zoning testified that his department has reviewed this matter and that the Zoning Regulations only permit two (2) density units for the entire tract of property and not three (3) as the illegal subdivision so suggests. The present zoning posture of the entire property is considered one tract with the potential for two (2) parcels and only two (2) density units. This Board is unable to grant the relief requested by the Petitioner for the same reasons as given by the Deputy Zoning Commissioner below. As was aptly stated by the Deputy Zoning Commissioner, the property rights of other individuals are involved in these proceedings, which individuals have not been joined in the Petition. It is clear that the consent of the other property owner, Thomas R. Curtis, to a non-density transfer of 4.0 acres with his parcel of property is necessary. Counsel for the Petitioner proffered to this Board that Mr. Curtis, who was present at the hearing but did not testify, had no objections to the granting of the building permit for the Petitioner's property, but would not consent to or join in Petitioner's Petition requesting the non-density transfer of Petitioner's property with his property.

Because the subdivision of the property was illegal and because the necessary parties have not joined in with the Petitioner with his request for the non-density transfer, the relief requested cannot be granted.

While this Board would like to grant the Petitioner relief, it simply cannot do so. This Board is charged with the responsibility of upholding the Zoning Regulations for Baltimore County which do not permit Petitioner's request. Petitioner may have relief by way of a civil action filed in the Circuit Court for

Baltimore County for damages or, in the alternative, to set aside the deed conveyance to him. Further, he may be entitled to relief pursuant to Section 22-44 of the Baltimore County Code which seems to apply to the factual circumstances in this case.

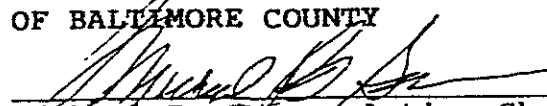
ORDER

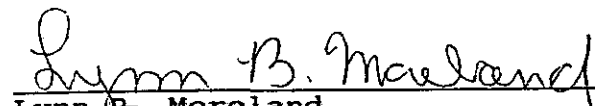
For the reasons as set out above, it is this 21st day of August, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing to approve the non-density transfer of 4 acres to an adjoining property owner and to establish not more than two (2) lots from a 12-acre parcel in an RC-2 zone, be and the same is hereby DENIED, and

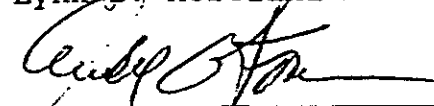
IT IS FURTHER ORDERED that no permits shall be issued and/or approved by the Zoning Commissioner's office for the parcels known as 1, 2, and 3 as set forth in Petitioner's Exhibit No. 1, without a special hearing determining the appropriateness of same and/or approval of the Zoning Commissioner after submission of appropriate documentation.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Michael B. Sauer, Acting Chairman


Lynn B. Moreland


Arnold G. Foreman

- (12) The construction of accessory structures.
- (13) Any proposed development, if the director finds that compliance with these regulations would cause unnecessary hardship.

(b) If the director of planning and zoning determines that a waiver is appropriate, prior to granting such waiver, the director shall give written notice to the planning board of the nature of the contemplated waiver action and the reasons therefor. At the next scheduled meeting of the planning board, a majority of the members of the board in attendance at said meeting may vote to deny or amend with the consent of the applicant, in writing, the director's contemplated waiver action; and the director shall deny or amend the waiver in accordance with the majority vote of the planning board. If no action is taken by the planning board at said meeting, the director may grant the waiver in accordance with the written notification to the planning board. (Bill No. 56, 1982, § 2)

Sec. 22-44. Transfer of land in unapproved or expired subdivision.

(a) A person may not convey any lot, parcel or tract of a subdivision unless a plat, if required, has been recorded in accordance with these regulations, and the plat is effective at the time of said conveyance.

(b) The transferee of any lot, parcel or tract conveyed in violation of this section may bring an action in the circuit court for rescission of the conveyance and return of any deposit or purchase money paid, as well as reimbursement for reasonable expenses, including attorney's fees, incurred in connection with the conveyance. (Bill No. 56, 1982, § 2)

Sec. 22-45. Recording unapproved plat.

A person may not offer and the clerk of the circuit court may not accept any plat for recording in the plat records of Baltimore County unless the same has been approved for recording as required by these regulations. (Bill No. 56, 1982, § 2)

IN THE MATTER OF THE
THE APPLICATION OF
DENNIS MCGEE
FOR A ZONING RECLASSIFICATION
FROM R.C. 2 TO R.C. 5 ON PROPERTY
LOCATED ON THE WEST SIDE FALLS ROAD
(400' WEST OF CENTERLINE & APPROXI-
MATELY 3200' SOUTH BENSON MILL RD.
(15906 FALLS ROAD)
5th ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. R-91-363
* Item #5, Cycle V
* 1991

* * * * *
O P I N I O N

This case comes before this Board on Petition for Reclassification from R.C. 2 to R.C. 5 for a 4-acre parcel located in Baltimore County. A history of this 4-acre parcel is in actuality the crux of this whole hearing. Testimony from Dennis McGee who has purchased the parcel was heard, and testimony from Wallace Lippincott, Baltimore County Planner, as regarding this property was heard, and from this testimony the history of this property is documented.

Bessie Curtis, the owner of the original 12-acre parcel, passed away in 1983 and by will divided the property among her three children. On August 17, 1984, the three children filed a deed in lieu of partition in the Land Records of Baltimore County, illegally dividing the 12-acre tract into three parcels. Since 1984, there has been no construction on any of the three parcels. Parcel 1 was given to the daughter, Martha Kohler, who passed away and willed this parcel to Thomas Curtis's daughters. Parcel 2 was deeded to Thomas Curtis. Parcel 3 was deeded to Martha Kohler as trustee for her brother, Harry Curtis. Parcel 3 is the subject site in this case. Parcel 3 was subsequently sold in 1984 to a Mr.

MICROFILMED

Lee.

After failing to obtain a building permit for the property, Petitioner filed a Petition for Special Hearing (Case No. 90-62-SPH) which requested that the division of the tract be resolved in such a way that would enable Petitioner to get his building permit. The Zoning Commissioner denied Petitioner's request, and the Board of Appeals, after hearing in August 1990, also denied the Petitioner's request. Under Section 1A01.3B of the Baltimore County Zoning Regulations, any property zoned R.C. 2 of between 2 and 100 acres may be subdivided into only two parcels. It is the opinion of this Board, therefore, that the subdividing of the 12-acre original parcel into three sub-parcels is in fact an illegal subdivision and is a bitter fact we have to face.

There is ample evidence that the Petitioner purchased this 4-acre parcel with the full understanding from the seller that it was a buildable parcel. The Petitioner has had a well drilled and tested, has had the property perk tested for sewerage, and has obtained the right-of-way for access to the property, all of which evidence good faith on Mr. McGee's part and his desire to build his residence on this lot. The Board, however, does not have the authority to reclassify an illegal parcel that would permit the obtaining of a building permit. To attempt to reclassify this one isolated 4-acre parcel into an R.C. 5 designation, in addition to reclassifying an illegal subdivision, would also be blatant spot zoning, and would never stand the test of time. After considering all the testimony and evidence received, the Board will find as a

fact that this 12-acre parcel was illegally subdivided and that no building permits can be issued for any of the three parcels until the subdivision problems are resolved. Mr. McGee, however, was obviously misled by the seller of the parcel and has evidenced very good faith by his actions that he was under the impression and relied upon the seller that this was a buildable lot, and should carefully consider Code Section 26-173 to seek relief from problems not self-created.

O R D E R

IT IS THEREFORE this 14th day of November, 1991 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification of the subject from R.C. 2 to R.C. 5 be and the same is hereby DENIED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Judson H. Lipowitz
Judson H. Lipowitz

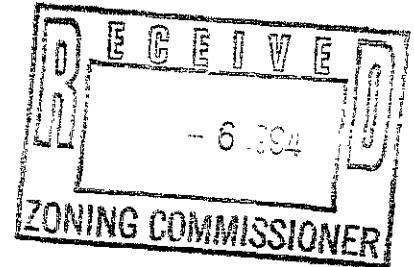
S. Diane Levero
S. Diane Levero



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

October 5, 1994



Douglas Worrall, Esquire
Smith, Sommerville & Case
100 Light Street
Baltimore, MD 21202

RE: Case No. 94-42-SPH
Dennis G. McGee - Petitioner

Dear Mr. Worrall:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Dissenting Opinion of William T. Hackett.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

encl.

cc: Margaret Worrall, Valleys Planning Council
Hurst R. Hessey, Esquire
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director/ZADM



IN THE MATTER OF THE
THE APPLICATION OF
DENNIS G. MCGEE
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE WEST-
SIDE FALLS ROAD, 2500 FT. S
OF BENSON MILL ROAD
(15906 FALLS ROAD)
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 94-42-SPH

* * * * *

O P I N I O N

Dennis McGee filed a Petition for Special Hearing through his attorney Hurst R. Hessey, Esquire, seeking approval to combine two lots for the purpose of obtaining a building permit for single family dwelling. This petition was denied by Order of the Zoning Commissioner and subsequently appealed to this Board. At the hearing on the Petition, the Board received testimony and evidence from which we find the following facts.

Bessie R. Curtis, widow of Levy Curtis, originally owned approximately 14 acres of land in northern Baltimore County. This 14-acre parcel was located adjacent to Falls Road and was roughly J-shaped. The tract is and has been zoned R.C.2 since 1979 and is improved with a single family dwelling and several outbuildings. The dwelling is located on the front portion of the property, immediately next to Falls Road.

On or about May 6, 1971, Mrs. Curtis transferred approximately 1.451 acres to her son, Thomas Curtis, and his wife, Dorothy R. Curtis. Ultimately, the younger Mr. Curtis constructed a single family dwelling on that lot. That conveyance reduced Mrs. Curtis' holdings to 12.5 acres, more or less. Thereafter, on or about April 26, 1973, Mrs. Curtis conveyed a second parcel of approximately .7 acres to the Baltimore Gas and Electric Company (BG & E). Apparently, the purpose of this transfer was to provide an area for BG & E to construct a utility tower for the Company's

power grid through northern Baltimore County. The significance and legal effect of that transfer is disputed by and between the parties hereto and will be addressed hereinafter in this opinion. In any event, -subsequent to these conveyances, Mrs. Curtis was left with approximately 12 acres, unencumbered and in-fee.

Baltimore County adopted the R.C. zoning classification on November 24, 1979. As of that date, Mrs. Curtis' parcel was zoned R.C.2. Mrs. Curtis passed away in February, 1983 and by her Will, divided the 12-acre tract among her three children. On August 17, 1984, the three children filed a Deed in Lieu of Partition in the Land Records of Baltimore County dividing the 12-acre tract into three parcels of approximately 4 acres each. As shown on the Plat, (Petitioner's Exhibit #1), the first parcel located towards the front of the original tract and containing the original dwelling was conveyed to Mary V. Kohler, a daughter. A second parcel was conveyed to Thomas Curtis which was located to the rear of the original tract, adjacent to the 1.451 acres previously conveyed to him, providing Mr. Curtis with two abutting lots and a combined total of approximately 5.5 acres. The third parcel, also located to the rear of the original tract, was conveyed to Martha Kohler as Trustee for her brother, Harry Curtis. This parcel was subsequently sold to a third party, Michael Lee, et al. Mr. Lee conveyed his interest in the property in 1986 to the present owner and Petitioner, Dennis McGee. It is agreed by the parties that the Petitioner purchased the property with the intention of constructing a single family residence there, believing the property constituted a buildable lot. However, no construction has taken place.

As noted above, the property is zoned R.C.2 and has so been

zoned since the adoption of the R.C. zoning classification on November 24, 1979. The R.C. regulations provide that no lot having an area of less than 1 acre can be created in an R.C.2 zone. (See Section 1A01.3.B.2 of the B.C.Z.R.). Moreover, as to residential density in an R.C.2 zone, the regulations provide that any lot having a gross area of between 2 and 100 acres may be subdivided into no more than two (2) lots total. (See Section 1A01.3.B.1 of the B.C.Z.R.). In view of these density requirements, a question arose as to the propriety of the subdivision of this 12-acre tract by recordation of the deeds partitioning the property to Mrs. Curtis' three children.

Mr. McGee now argues that a density unit is attributable to the .7 acre parcel which was transferred to BG & E by Mrs. Curtis in 1973. Thus, he intends on seeking a transfer of that density unit to his 4-acre parcel, thereby permitting a single family dwelling to be constructed thereon. The first issue presented questions the nature of the conveyance of the .7 acre parcel by Mrs. Curtis to BG & E in 1973. Essentially, the Valleys Planning Council (VPC) contends that the conveyance was nothing more than the granting of an easement for utility line use by BG & E. Thus, VPC contends that no .7 acre "lot" was created and that there is no density unit attributable to that lot. VPC claims that the Estate of Bessie Curtis continues to own the .7 acre parcel, subject to BG & E's easement.

A review of the deed of conveyance for this tract, recorded among the Land Records of Baltimore County at Liber 5355, Page 052, is necessary to resolve this questions. This deed was presented into evidence in this case as VPC's Exhibit 1. After reviewing the deed, it is clear that the conveyance from Bessie Curtis to BG & E

was a fee-simple transfer. The clear and unambiguous language of the deed is persuasive. Specifically, the deed states that Mrs. Curtis conveyed the subject .7 acre parcel "unto the said Baltimore Gas and Electric Company, its successors and assigns, in fee simple,..." (emphasis added). Elsewhere in the document, a legal description of the .7 acre parcel is provided. However, after the reservation clause, the deed provides that the property will be conveyed "Together with any, all and every the rights, alleys, ways, waters, privileges, appurtenances, and advantages to same belonging or in any wise appertaining." The "to have and to hold" portions of the deed likewise reference the fact that the conveyance is in fee-simple.

Admittedly, Mrs. Curtis did retain a right to utilize the property. That is, it is provided that she would continue to have the right to farm the property and cross said parcel. However, her interest is the reservation of an easement in a fee-simple conveyance rather than an easement conveyance as argued by the VPC. I see no evidence in the deed or otherwise that the conveyance to BG & E is anything less than fee-simple, with a reserved easement.

Having there determined that Bessie Curtis conveyed a fee-simple interest to BG & E in 1973, the next question presented relates to the "density", if any, allocated to that .7 acre parcel as of the date of the adoption of the R.C. zoning classification in Baltimore County.

As I have indicated above, the Curtis to Baltimore Gas and Electric transfer of a parcel of ground in 1973 created a "lot" as that term is defined in Sec. 101 of the B.C.Z.R. since it was "a parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the

zoning regulations which governs the use, subdivision, or other condition thereof". Since it was recorded in 1973, it preexisted passage of the R.C.2 legislation in 1979. By its terms, the deed passed the ground in fee-simple absolute, however, it was subject to an easement and to a covenant.

The owner of real property in fee-simple absolute has the right to build upon one's own land. That right is subject to all applicable provisions of law and is not a grant of favor from governmental authority. In the absence of enforceable restrictive covenants from the deed, or restrictions duly imposed by zoning authorities, a property owner has the right to use the property as he sees fit, as long as the use does not constitute a nuisance. Feldman vs. Star Homes, Inc. 199 MD 1 (1952); Kulbitsky vs. Zimnoch 196 MD 504, 77 A.2nd 14 (1950). Just prior to the passage of legislation creating the RC zones, which now prohibits the creation of lots less than an acre, assuming there were no other voluntary restrictions, BG & E would have had a right to build upon its lot even if it were undersized, if all the other tests of Sec. 304 of the B.C.Z.R could have been met.

The BG & E lot may have possessed the right to build due to the language of the R.C. zones which speaks in terms of principal dwellings on parcels and rights of subdivision, rather than "density". Even though less than 2 acres in size and thus not legally capable of subdivision, the "lot" would in some circumstances permit the construction of a principal dwelling. However, that right to develop the lot, or in other words that development right, became lost when the Baltimore County Council passed the R.C. zone legislation. The law of zoning holds that this Board, when making decisions, must apply the existing law to

a case. Changes in zoning law apply prospectively only in the absence of intent expressed of the County Council to apply the law retroactively. Unless development rights have become vested, they can be lost in the enactment of more restrictive zoning laws. There is no vested right in zoning until construction is substantially begun. Rockville Fuel vs. Gaithersburg 266 MD 117, 291 A.2nd 672; Colwell vs. Howard County 31 MD App 8 354 A.2nd 210. Therefore, even if BG & E possessed the right to build upon the .7 acre lot, no evidence appears in this case that that development right had been vested in BG & E prior to the passage of the R.C.2 legislation. When that legislation passed, it obliterated whatever non-vested right to build upon the .7 acre lot BG & E possessed. Therefore, if BG & E Company does not possess the right to build upon the .7 acre lot, then clearly, there is no right to build that it can transfer to McGee.

The more interesting question arises as to whether or not the 12 acre site possessed by Mrs. Curtis as of the date of the passage of the R.C. legislation would permit construction of another principal dwelling once it was subdivided upon the distribution of her estate. Without a lengthy analysis, suffice it to say that petitioner already tried that approach in a previous case before this Board, Case No. 90-62-SPH. The Board, as then constituted, in its opinion, noted that the Board is unable to grant the relief requested by the petitioner for the same reasons given by the D.Z.C. below, namely that the property rights of other individuals were involved in the proceedings and those individuals had not been joined in the petition. No appeal was taken from that order to the Circuit Court, and that stands as a concluded final order of the Board. It would be res judicata for petitioner to attempt in this

case, or to attempt to salvage his petition by arguing that no right to build or develop was transferred from Bessie Curtis to BG & E, and therefore it was retained in the 12 acre site and now could be accorded to his lot which is parcel 3.

Accordingly, we deny the petition for Special Hearing and its requested relief. The Board would refer Petitioner to Section 26-173 of the Baltimore County Code, which provides for the rescission of the conveyance and return of any deposit or purchase money paid, as well as reimbursement for reasonable expenses, including attorney's fees, incurred in connection with the transfer of land in an unapproved subdivision.

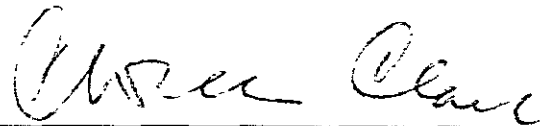
O R D E R

IT IS THEREFORE this 5th day of October, 1994 by the County Board of Appeals of Baltimore County

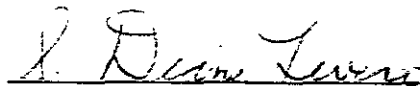
ORDERED that the Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit for a single family dwelling be and is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



C. William Clark



S. Diane Levero

IN THE MATTER OF
THE APPLICATION OF
DENNIS G. McGEE -Petitioner
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE WEST SIDE FALLS
ROAD, 2500' SOUTH OF BENSON MILL
ROAD (15906 FALLS ROAD)
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 94-42-SPH

* * * * *

DISSENTING OPINION

In Case No. 94-42-SPH, Dennis G. McGee, Petitioner, as a result of open deliberations, the Board will split, two for the denial of the Petition for Special Hearing and this member respectfully dissenting from the majority opinion for the following reasoning.

In 1932, Mr. and Mrs. Curtis acquired a 14-acre parcel zoned RDP. The RDP zoning addresses only the lot size restriction of one acre per lot, and does not address any density requirements. Under RDP, it is assumed that all such created lots are buildable parcels. In May of 1971, a 1.4-acre parcel was deeded to the son, Thomas Curtis, who erected a residence on the 1.4 acres, which is permissible under the RDP. In April 1973, 3/4 acre of land in fee simple was deeded to the Baltimore Gas & Electric Company (hereinafter "BG & E") for the erection of a transmission tower, which was permissible under the RDP zoning. While this .7 acre of land deeded to BG & E did not meet the required one-acre minimum under the existing RDP regulations, a lot was recorded in fee simple and accepted by Baltimore County as a recorded lot, and as such it must be assumed that it was eligible for a permit to erect a residence, all other conditions being complied with. This now

leaves 12 acres of RDP land owned by Mrs. Curtis.

In November of 1979, the RDP zoning was changed to R.C. 2. Mrs. Curtis passed away in 1983 and, by her will, the 12 acres were divided into three 4-acre units and deeded to her three children. One lot of 4 acres was deeded to Thomas Curtis, said lot abutting his already existing 1.4-acre parcel; one lot of 4 acres to the daughter, Martha Kohler, with an existing house already on the lot; and the third lot of 4 acres to Martha Kohler by her brother. This lot was sold in fee simple to Mr. Michael Lee, who in turn sold it to Mr. McGee, with every expectation that he could erect a residence on this 4-acre parcel. At this time, Baltimore County declared the subdivision to be an illegal subdivision, and denied Mr. McGee's permit for the erection of a residence. The Board will note that at this time the property had already passed the perk test and had a well drilled and accepted by Baltimore County, and an access easement provided to the site.

Mr. McGee, in order to obtain a density unit, comes to this Board under petition to transfer the unused density unit from the .7-acre BG & E parcel to what is known on the plat as Lot 3 in order to build a residence. Baltimore County regulations 500.7 permit the density transfer as requested. There was no objection by BG & E of any transfer of density from the .7-acre parcel before either the Zoning Commissioner or the Board of Appeals. Surely if BG & E objected to the loss of this density unit, they had ample opportunity to so indicate. The obvious truth of the matter is that they purchased the property to erect a transmission tower,

have erected a transmission tower, and in no way anticipate the erection of a residence on this site, and therefore take no issue with the proposed transfer of the density unit.

This Board member avers that there was an unspoken density unit attributed to this parcel in 1973, and that the deed to this parcel was recorded in fee simple with only the reservation allowing passage across the property or its use as farmland if so desired. This Board member is of the opinion that there did in fact exist a density unit in 1973 when the lot was recorded, that density unit has never been used, and that it is available for transfer to Lot 3 owned by Mr. McGee in order to build a residence. The erection of this proposed residence is in absolutely no way detrimental to any other property owner in the area, nor is it detrimental in any way whatsoever to Baltimore County. The relief sought in this Petition is merely that Mr. McGee be permitted to erect his residence on this site. This Board member will respectfully dissent from the denial of the special hearing and would grant the special hearing as petitioned.

BY: William T. Hackett
William T. Hackett, Chairman

DATE: October 5, 1994

CONTRACT OF SALE

96-289-SPH

THIS CONTRACT OF SALE is dated DEC 12, 1995, between Thomas R. Curtis, Dorothy R. Curtis, and Gretchen K. Hundertmark, Minor, collectively, "Sellers", and Dennis G. McGee, "Buyer".

1. *Property.* Sellers bargain and sell to the Buyer and the Buyer purchases from the Sellers the fee simple property lying in Baltimore County, Maryland, containing two and one-half (2.5) acres of land, more or less, generally described as the westernmost or southwesternmost 250 feet of the Curtis Family Parcel Two, and being more particularly shown as the crosshatched portion on the Corrective Property Plan for Dennis G. McGee filed with Baltimore County DRC and attached as Exhibit A, together with all improvements thereon and all appurtenances thereto. The property shown on Exhibit A, together with its appurtenances and improvements, is hereinafter called the "Property." The "Proposed line of line of Division" as designated on Exhibit A, to the extent feasible upon determination by the Buyer's engineer, shall begin where it intersects the "line of division" approximately 250 feet east of the western boundary of the Property and shall be, to the extent feasible, perpendicular to the "line of division". It is understood and agreed by the parties that a final metes and bounds description of the Property has not yet been prepared. The Property conveyed shall also include all of the rights to the density unit that is presently available to either the Curtis Family Parcel Two or the adjacent lot owned by Buyer, under Baltimore County zoning regulations.

2. *Present Status of Title.* The parties acknowledge that title to the Property is presently held as a life estate in Thomas R. Curtis and Dorothy R. Curtis, his wife, and the survivor of them, with remainder to Gretchen K. Hundertmark, a minor, all pursuant to Deed dated October 29, 1984, and recorded among the Land Records of Baltimore County in Liber 6810, folio 224. The life tenants, Thomas R. Curtis and Dorothy R. Curtis failed to retain the power to dispose of the property in the said Deed.

3. *Purchase Price and Deposit.* The purchase price to be paid by the Buyer to the Seller for the Property is thirty-eight thousand dollars (\$38,000), which shall be paid (i) by a \$500.00 deposit upon execution of this Contract, to be retained by Edward C. Covahey, attorney for Sellers, and (ii) the balance of \$37,500.00 shall be paid in cash, certified check, or Title Company check at settlement. The deposit shall be returned by Buyer in the event any contingency set forth in this Contract fails.

4. *Buyer's Contingencies.* The Buyer's obligation to purchase the Property pursuant to this Contract is contingent upon the following, all or any of which may be waived by the Buyer (such waiver, however, must be in writing and signed by the Buyer).

(a) The Buyer obtaining, within six (6) months from the date of this Contract, all zoning reclassification, subdivision approvals, permits for water and sewer connections, public works agreements and other governmental permits and approvals which

are required as a prerequisite to the development of the Property into a single residential lot with a single family residence to be erected thereon (the "Intended Use").

(b) Gretchen K. Hundertmark executing or re-executing, as the case may be, upon the arrival at the age of 18, (and in any event, no later than March 30, 1996) (i) this Contract, or (ii) another document, reasonably satisfactory to Buyer, that creates in the said Gretchen Hundertmark the binding obligation to fulfill her obligations hereunder.

(c) The Buyer conducting to his satisfaction, within three (3) months from the date the contingency set forth in (a) above is satisfied, such tests and engineering studies of the Property as, in the reasonable exercise of the Buyer's judgment, are necessary to determine if there are any conditions in or about the Property which would render its development for the Intended Use uneconomic, and the Buyer, in the reasonable exercise of the Buyer's judgment, being satisfied that no such conditions exist.

(d) The Buyer obtaining a commitment for financing the sum of \$38,000, plus \$10,000.00 for subdivision engineering expenses, at a rate not higher than nine and one-half percent (9-1/2%) per annum, twenty-five year amortization, payable in full in three years, no points, within three (3) months from the date the contingency set forth in (a) above is satisfied.

Buyer shall have the right to extend (i) the six (6) month contingency periods referred to in subparagraph (a) above, and/or (ii) the three (3) month contingency in subparagraph (c) above upon written notice to Sellers, for an additional period of three (3) months, if at the expiration of the initial contingency period, there is then pending an administrative or legal proceeding which, in the reasonable exercise of the Buyer's judgment, has prevented the fulfillment of, or is necessary for the fulfillment of, that contingency.

5. *Zoning and Court Approvals.* The parties agree to join in and diligently prosecute a Petition for Special Hearing before the Zoning Commissioner of Baltimore County, for the purpose of (a) obtaining the Zoning Commissioner's approval for (i) consolidating the Property with an adjacent 4.0 acre lot, more or less, already owned by the Buyer, and (ii) the transfer of the density unit available to the Property to the resulting consolidated lot (the "Consolidated Lot"), and (b) ultimately, obtaining a building permit for a single family residence on the Consolidated Lot. Buyer shall bear all of the fees imposed by Baltimore County in filing and prosecuting the Petition for Special Hearing.

6. *Buyer's Obligations During Contingency Period.* During the initial contingency periods provided in paragraph 4 above, (or the extended contingency period should the Buyer elect to extend the contingency period referred to in subparagraph 4(a) or (c) above), the Buyer shall use reasonable diligence and act in good faith to seek fulfillment of the contingencies set forth in paragraph 4.

7. *Failure of Buyer's Contingencies.* If during an initial or extended contingency period the Buyer shall determine, in the reasonable exercise of the Buyer's judgment, that it is unlikely that one or more of the contingencies provided for in paragraph 4 to which the period relates will be fulfilled within the then applicable contingency period, the Buyer shall have the right by written notice to Sellers to terminate this Contract prior to the expiration of the then applicable contingency period, and thereupon this Contract, with the exception of the indemnities contained in paragraphs 8 and 16, shall become null and void and of no further force and effect at law and in equity. In the event all of the contingencies set forth in paragraph 4 are not fulfilled within the applicable contingency periods, then the Buyer shall have the right by written notice to the Sellers to terminate this Contract, and this Contract, with the exception of the indemnities contained in paragraphs 8 and 16, shall become null and void and of no further force and effect at law and in equity. Upon any such failure, the deposit shall forthwith be refunded to Buyer.

8. *Buyer's Right of Entry and Inspections.* During the term of this Contract the Buyer, its agents, employees, contractors and engineers shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. To the extent that it is practical to do so, all such entries shall be made in such a manner as to minimize interference with Sellers' present use and occupancy of the Property. Within a reasonable time after such entries Buyer shall, to the extent practicable, restore the Property to its prior condition. The Buyer agrees to indemnify and save the Sellers harmless from all claims arising by reason of such entries. Should the contingencies set forth in this Agreement fail and the Buyer not purchase the Property, Buyer will restore the Property to substantially its condition prior to entry.

9. *Sellers' Participation.* Prior to settlement the Sellers shall promptly join in the execution of such plats and other documents, and participate in such administrative or judicial proceedings, as are in the reasonable exercise of the Buyer's judgment required for the fulfillment of the contingencies set forth in subparagraph 4(a) and (c).

10. *Settlement.* Settlement shall be held within thirty (30) days after the date of the receipt by the Sellers of written notice from the Buyer that the contingencies set forth in paragraph 4 have been fulfilled or waived. If the contingencies are fulfilled the Buyer will not unreasonably delay in sending written notice of the fulfillment to the Sellers. The written notice from the Buyer to the Sellers shall specify the date, time and place of settlement. In the event of the failure of Buyer to specify the date, time and place of settlement, the settlement shall be held at the offices of Hessey & Hessey, P.A., 36 S. Charles Street, Suite 2400, Baltimore, Maryland, 21201, at 10:00 a.m. on that day which is the thirtieth (30th) day after the last day of the latest contingency period set forth in Paragraph 4 of this Contract. If such day is a Saturday, Sunday or holiday, settlement shall be held on the next succeeding business day. At settlement, Buyer shall pay to Sellers the purchase price for the Property. Upon payment of the purchase money as above provided, the Sellers shall execute and deliver to the Buyer a deed for the Property containing covenants of special warranty and further

96-289-SP
H

assurances, which shall convey the Property to the Buyer. The title so conveyed shall be a good and merchantable fee simple title, both of record and in fact, free of all liens and encumbrances except those specifically accepted or consented to by Buyer pursuant to paragraph 11 hereof. Title shall be such as will be insurable by a licensed title insurance company at its standard rates.

11. *Title Report.* Within sixty (60) days from the date of this Contract, the Buyer shall obtain, at its expense, a title report covering the Property from a licensed title insurance company selected by the Buyer (the "Title Company"). The Buyer shall give written notice to the Sellers within the sixty day period listing those title exceptions which are not acceptable to the Buyer. The Sellers shall have twenty (20) days from the receipt of the Buyer's notice within which to determine whether to cure or remove those title exceptions which are not acceptable to the Buyer or to terminate this Contract. Should the Sellers elect to terminate this Contract, the Sellers shall do so by giving the Buyer written notice of the election within the twenty day period; otherwise the Sellers shall be deemed to have elected to cure or remove those title exceptions unacceptable to the Buyer. Should the Sellers elect to terminate this Contract, this Contract, with the exception of the indemnities contained in paragraphs 7 and 16, shall become null and void and of no further force and effect at law and in equity, and the deposit shall forthwith be returned to Buyer. Should the Sellers not elect to terminate this Contract, the Sellers shall be required to convey the Property to the Buyer at settlement, subject only to those title exceptions acceptable to Buyer or which have been created subsequent to the date of this Contract with the consent of the Buyer. Anything in this paragraph 11 to the contrary notwithstanding, Sellers shall not have the right to terminate this Contract because of any title exception which is a lien securing a debt or other obligation, or which has been created by the Sellers subsequent to the date of this Contract without the consent of the Buyer.

12. *Risk of Loss.* The Property shall be held at the risk of the Sellers until legal title has passed and possession has been given to Buyer. The Sellers shall immediately have all insurance policies on the Property endorsed to protect all parties hereto as their interests may appear and shall continue the insurance in full force during the term of this Contract. In the event that it shall be determined by the Buyer that the Property is inadequately insured by the Sellers, the Buyer shall have the right at the Buyer's own expense, to obtain additional insurance as may be satisfactory to the Buyer.

13. *Documentary Stamps and Transfer Taxes.* All documentary stamps and state and county transfer taxes, including any applicable agricultural transfer tax, payable upon the consideration hereunder to be paid by the Buyer relating to the conveyance of the Property to the Buyer shall be paid by the Buyer.

14. *Real Estate Taxes.* Real estate taxes and similar public charges against the Property which are payable on an annual basis (including district, sanitary commission or other benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the date hereof or subsequent

96-289-SPH

thereto) shall be adjusted between the parties as of the date of settlement and assumed and paid thereafter by the Buyer.

15. *Possession.* Possession of the Property shall be given to the Buyer at settlement.

16. *Real Estate Commissions.* The Sellers and the Buyer each warrant and represent to the other that it has not used the services of any broker, agent or finder who would be entitled to a commission on account of this Contract or the consummation of the transactions contemplated hereby and agrees to defend, indemnify and save the other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the indemnifying party has dealt in connection with this Contract.

17. *Notices.* All notices required or provided in this Contract, if hand delivered, shall be deemed to have been given and received on the date hand delivered to the party receiving the same. If the United States mails are used, notices shall be sent certified or registered mail, return receipt requested, postage prepaid and shall be deemed to have been given and received on the third business day from the date deposited in the United States mails addressed as follows:

To Sellers: C/O Mr. Thomas Curtis
15902 Falls Road
Sparks, MD 21152

With Copy To: Edward C. Covahey, Jr.
614 Bosley Avenue
Towson, MD 21204

To Buyer: Dennis G. McGee
3728 Ballahack Road
Chesapeake, VA 23322

With Copy To: Hurst R. Hessey
Hessey & Hessey, P.A.
36 S. Charles St., Suite 2400
Baltimore, MD 21201

Each party shall have the right to designate a different address for the receipt of notices other than that set forth above, provided the party's new address is contained in a written notice given to the other party.

18. *Miscellaneous.*

96-289-SPH

(a) This Contract contains the final and entire agreement between the parties and neither they nor their agents should be bound by any terms, conditions or representations not herein written.

(b) Time shall be of the essence of this Contract.


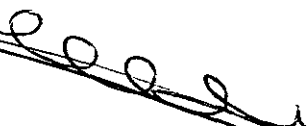

(c) The parties bind themselves, their heirs, personal representatives, successors and assigns to the faithful performance of this Contract.


(d) The indemnities contained in paragraphs 8 and 16 and the provisions of paragraph 14, 16, and this subparagraph 18(d) shall survive settlement and the execution and delivery of the deed of the Property.

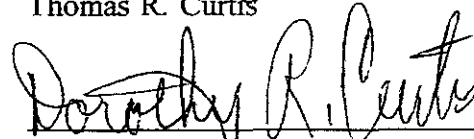
(e) This Contract shall be construed in accordance with the laws of the state of Maryland.


IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale and affixed their seal hereto on the date and year first above written.

WITNESS:

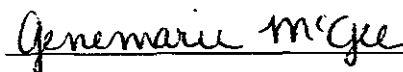





Thomas R. Curtis (SEAL)


Dorothy R. Curtis (SEAL)


Gretchen K. Hundertmark, Minor (SEAL)

Sellers




Dennis G. McGee, Buyer (SEAL)

[F:\WPD\MCGEE\CONDEP.912]

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Item #289

"DO NOT SCHEDULE
HEARING DURING
THIS TIME"

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~~RECOMMENDATION~~

96-289 SPH

(*) Report - Comment DPW

539-3300 - HURST HESSEY

(Hurst - Hesse)

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1 EMISSION VERIFICATION REPORT

TIME: 05 06 1996 11:17
NAME: CONN. TRAFFIC
FL : 410-007-1111
TEL :

DATE: 05 06 1996
TIME: 11:17

05 06 1996

11:17

TEL :

11

TEL : 410-007-1111

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2/22/96
CF
JO FS

HESSEY & HESSEY, P.A.
ATTORNEYS AT LAW
2400 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3193
(410) 539-3300
FAX: (410) 539-3305

February 21, 1996

Baltimore County-Department of
Permits & Development Management
111 West Chesapeake Avenue
Room 111
Towson, Maryland 21204

Re: Dennis G. McGee
Case No.: 96-289-SPH (Item 289)

Gentlemen:

Enclosed is original Certificate of Publication in the captioned matter.

Thank you for your assistance in this matter.

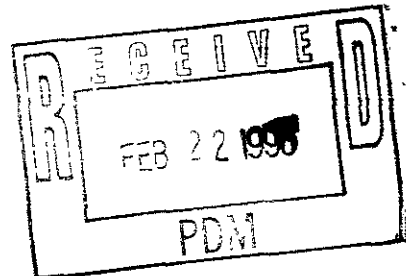
Sincerely,


Hurst R. Hessey

HRH/rmf
encl.

cc: Mr. Dennis G. McGee (w\ encl.)

[F:\WPD\MCGEE\BCDPDMLE.221]



HESSEY & HESSEY, P.A.

ATTORNEYS AT LAW

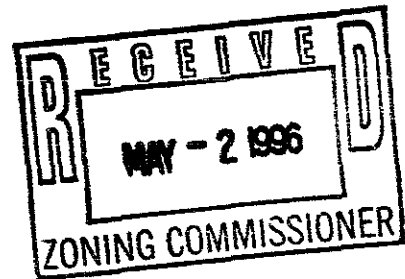
2400 CHARLES CENTER SOUTH

36 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201-3193

(410) 539-3300

FAX: (410) 539-3305



May 1, 1996

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Suite 112 Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Dennis G. McGee, Petitioner
Case No.: 96-289-SPH

Dear Mr. Schmidt:

We are in the process of concluding the saga of Dennis McGee. Your Order of March 18, 1996, required a deed to be recorded among the Land records of Baltimore County within 60 days.

Since first receiving the Order, we have diligently pursued engineering matters that had to be concluded, and are now in the process of concluding financing arrangements. The title work is not yet complete.

The purpose of this letter is to request a 30 day extension, until June 18, to record the deed. Thank you for your continuing attention in this matter.

Sincerely,

Hurst R. Hessey

*Granted
Lawrence E. Schmidt
5/6/96*

HRH:hh

cc: Mr. Dennis G. McGee
Mr. Michael Krupey, Reisterstown Federal Savings Bank
Peter Max Zimmerman, Esquire, People's Counsel

[F:\WPD\MCGEE\SCHMIDT 501]2

NO COPY FILED

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

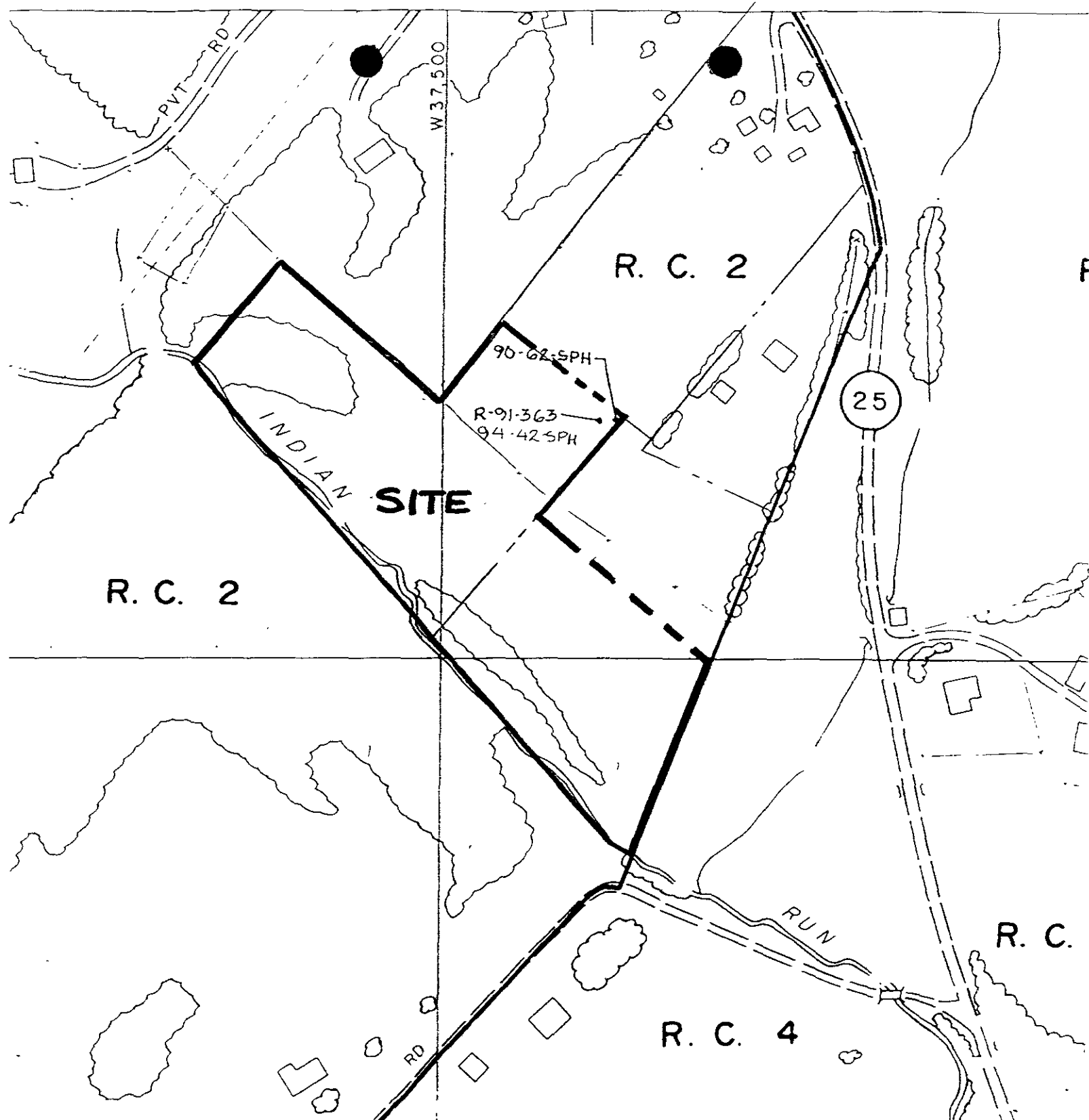
NAME

ADDRESS

Hurst Hessey
DENNIS MCGEE *Dennis McGee*
Dorothy Curtis
Thomas Curtis
Kathleen Forsythe (VPC)

Atty for Petitioner McGee
3728 BALLHACK RD CHES. VA 23322
15902 FALLS RD Sparks 21152
15902 FALLS RD Sparks 21152
Box 5402, Towson 21285





E ZONING MAP
re County Council
92

92,187-92,188-92,189-92

Howard IV
ty Council

SCALE

1" = 200' ±

DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION

NORTHWEST OF
COOPERSVILLE

96-289-SPH

SHEET

MICROFILMED

N.W.

24-G

ITEM 289

96-289-SP4

CONTRACT OF SALE

THIS CONTRACT OF SALE is dated DEC 12, 1995, between Thomas R. Curtis, Dorothy R. Curtis, and Gretchen K. Hundertmark, Minor, collectively, "Sellers", and Dennis G. McGee, "Buyer".

1. *Property.* Sellers bargain and sell to the Buyer and the Buyer purchases from the Sellers the fee simple property lying in Baltimore County, Maryland, containing two and one-half (2.5) acres of land, more or less, generally described as the westernmost or southwesternmost 250 feet of the Curtis Family Parcel Two, and being more particularly shown as the crosshatched portion on the Corrective Property Plan for Dennis G. McGee filed with Baltimore County DRC and attached as Exhibit A, together with all improvements thereon and all appurtenances thereto. The property shown on Exhibit A, together with its appurtenances and improvements, is hereinafter called the "Property." The "Proposed line of line of Division" as designated on Exhibit A, to the extent feasible upon determination by the Buyer's engineer, shall begin where it intersects the "line of division" approximately 250 feet east of the western boundary of the Property and shall be, to the extent feasible, perpendicular to the "line of division". It is understood and agreed by the parties that a final metes and bounds description of the Property has not yet been prepared. The Property conveyed shall also include all of the rights to the density unit that is presently available to either the Curtis Family Parcel Two or the adjacent lot owned by Buyer, under Baltimore County zoning regulations.

2. *Present Status of Title.* The parties acknowledge that title to the Property is presently held as a life estate in Thomas R. Curtis and Dorothy R. Curtis, his wife, and the survivor of them, with remainder to Gretchen K. Hundertmark, a minor, all pursuant to Deed dated October 29, 1984, and recorded among the Land Records of Baltimore County in Liber 6810, folio 224. The life tenants, Thomas R. Curtis and Dorothy R. Curtis failed to retain the power to dispose of the property in the said Deed.

3. *Purchase Price and Deposit.* The purchase price to be paid by the Buyer to the Seller for the Property is thirty-eight thousand dollars (\$38,000), which shall be paid (i) by a \$500.00 deposit upon execution of this Contract, to be retained by Edward C. Covahey, attorney for Sellers, and (ii) the balance of \$37,500.00 shall be paid in cash, certified check, or Title Company check at settlement. The deposit shall be returned by Buyer in the event any contingency set forth in this Contract fails.

4. *Buyer's Contingencies.* The Buyer's obligation to purchase the Property pursuant to this Contract is contingent upon the following, all or any of which may be waived by the Buyer (such waiver, however, must be in writing and signed by the Buyer).

(a) The Buyer obtaining, within six (6) months from the date of this Contract, all zoning reclassification, subdivision approvals, permits for water and sewer connections, public works agreements and other governmental permits and approvals which

Parcel No 12

EXHIBIT NO. A

ITEM 289

96-289-SP4

are required as a prerequisite to the development of the Property into a single residential lot with a single family residence to be erected thereon (the "Intended Use").

(b) Gretchen K. Hundertmark executing or re-executing, as the case may be, upon the arrival at the age of 18, (and in any event, no later than March 30, 1996) (i) this Contract, or (ii) another document, reasonably satisfactory to Buyer, that creates in the said Gretchen Hundertmark the binding obligation to fulfill her obligations hereunder.

(c) The Buyer conducting to his satisfaction, within three (3) months from the date the contingency set forth in (a) above is satisfied, such tests and engineering studies of the Property as, in the reasonable exercise of the Buyer's judgment, are necessary to determine if there are any conditions in or about the Property which would render its development for the Intended Use uneconomic, and the Buyer, in the reasonable exercise of the Buyer's judgment, being satisfied that no such conditions exist.

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96-289-SPH

7. *Failure of Buyer's Contingencies.* If during an initial or extended contingency period the Buyer shall determine, in the reasonable exercise of the Buyer's judgment, that it is unlikely that one or more of the contingencies provided for in paragraph 4 to which the period relates will be fulfilled within the then applicable contingency period, the Buyer shall have the right by written notice to Sellers to terminate this Contract prior to the expiration of the then applicable contingency period, and thereupon this Contract, with the exception of the indemnities contained in paragraphs 8 and 16, shall become null and void and of no further force and effect at law and in equity. In the event all of the contingencies set forth in paragraph 4 are not fulfilled within the applicable contingency periods, then the Buyer shall have the right by written notice to the Sellers to terminate this Contract, and this Contract, with the exception of the indemnities contained in paragraphs 8 and 16, shall become null and void and of no further force and effect at law and in equity. Upon any such failure, the deposit shall forthwith be refunded to Buyer.

8. *Buyer's Right of Entry and Inspections.* During the term of this Contract the Buyer, its agents, employees, contractors and engineers shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. To the extent that it is practical to do so, all such entries shall be made in such a manner as to minimize interference with Sellers' present use and occupancy of the Property. Within a reasonable time after such entries Buyer shall, to the extent practicable, restore the Property to its prior condition. The Buyer agrees to indemnify and save the Sellers harmless from all claims arising by reason of such entries. Should the contingencies set forth in this Agreement fail and the Buyer not purchase the Property, Buyer will restore the Property to substantially its condition prior to entry.

9. *Sellers' Participation.* Prior to settlement the Sellers shall promptly join in the execution of such plats and other documents, and participate in such administrative or judicial proceedings, as are in the reasonable exercise of the Buyer's judgment required for the fulfillment of the contingencies set forth in subparagraph 4(a) and (c).

10. *Settlement.* Settlement shall be held within thirty (30) days after the date of the receipt by the Sellers of written notice from the Buyer that the contingencies set forth in paragraph 4 have been fulfilled or waived. If the contingencies are fulfilled the Buyer will not unreasonably delay in sending written notice of the fulfillment to the Sellers. The written notice from the Buyer to the Sellers shall specify the date, time and place of settlement. In the event of the failure of Buyer to specify the date, time and place of settlement, the settlement shall be held at the offices of Hessey & Hessey, P.A., 36 S. Charles Street, Suite 2400, Baltimore, Maryland, 21201, at 10:00 a.m. on that day which is the thirtieth (30th) day after the last day of the latest contingency period set forth in Paragraph 4 of this Contract. If such day is a Saturday, Sunday or holiday, settlement shall be held on the next succeeding business day. At settlement, Buyer shall pay to Sellers the purchase price for the Property. Upon payment of the purchase money as above provided, the Sellers shall execute and deliver to the Buyer a deed for the Property containing covenants of special warranty and further

96-289-SPH

assurances, which shall convey the Property to the Buyer. The title so conveyed shall be a good and merchantable fee simple title, both of record and in fact, free of all liens and encumbrances except those specifically accepted or consented to by Buyer pursuant to paragraph 11 hereof. Title shall be such as will be insurable by a licensed title insurance company at its standard rates.

11. *Title Report.* Within sixty (60) days from the date of this Contract, the Buyer shall obtain, at its expense, a title report covering the Property from a licensed title insurance company selected by the Buyer (the "Title Company"). The Buyer shall give written notice to the Sellers within the sixty day period listing those title exceptions which are not acceptable to the Buyer. The Sellers shall have twenty (20) days from the receipt of the Buyer's notice within which to determine whether to cure or remove those title exceptions which are not acceptable to the Buyer or to terminate this Contract. Should the Sellers elect to terminate this Contract, the Sellers shall do so by giving the Buyer written notice of the election within the twenty day period; otherwise the Sellers shall be deemed to have elected to cure or remove those title exceptions unacceptable to the Buyer. Should the Sellers elect to terminate this Contract, this Contract, with the exception of the indemnities contained in paragraphs 7 and 16, shall become null and void and of no further force and effect at law and in equity, and the deposit shall forthwith be returned to Buyer. Should the Sellers not elect to terminate this Contract, the Sellers shall be required to convey the Property to the Buyer at settlement, subject only to those title exceptions acceptable to Buyer or which have been created subsequent to the date of this Contract with the consent of the Buyer. Anything in this paragraph 11 to the contrary notwithstanding, Sellers shall not have the right to terminate this Contract because of any title exception which is a lien securing a debt or other obligation, or which has been created by the Sellers subsequent to the date of this Contract without the consent of the Buyer.

12. *Risk of Loss.* The Property shall be held at the risk of the Sellers until legal title has passed and possession has been given to Buyer. The Sellers shall immediately have all insurance policies on the Property endorsed to protect all parties hereto as their interests may appear and shall continue the insurance in full force during the term of this Contract. In the event that it shall be determined by the Buyer that the Property is inadequately insured by the Sellers, the Buyer shall have the right at the Buyer's own expense, to obtain additional insurance as may be satisfactory to the Buyer.

13. *Documentary Stamps and Transfer Taxes.* All documentary stamps and state and county transfer taxes, including any applicable agricultural transfer tax, payable upon the consideration hereunder to be paid by the Buyer relating to the conveyance of the Property to the Buyer shall be paid by the Buyer.

14. *Real Estate Taxes.* Real estate taxes and similar public charges against the Property which are payable on an annual basis (including district, sanitary commission or other benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the date hereof or subsequent

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thereto) shall be adjusted between the parties as of the date of settlement and assumed and paid thereafter by the Buyer.

15. *Possession.* Possession of the Property shall be given to the Buyer at settlement.

16. *Real Estate Commissions.* The Sellers and the Buyer each warrant and represent to the other that it has not used the services of any broker, agent or finder who would be entitled to a commission on account of this Contract or the consummation of the transactions contemplated hereby and agrees to defend, indemnify and save the other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the indemnifying party has dealt in connection with this Contract.

17. *Notices.* All notices required or provided in this Contract, if hand delivered, shall be deemed to have been given and received on the date hand delivered to the party receiving the same. If the United States mails are used, notices shall be sent certified or registered mail, return receipt requested, postage prepaid and shall be deemed to have been given and received on the third business day from the date deposited in the United States mails addressed as follows:

To Sellers: C/O Mr. Thomas Curtis
15902 Falls Road
Sparks, MD 21152

With Copy To: Edward C. Covahey, Jr.
614 Bosley Avenue
Towson, MD 21204

To Buyer: Dennis G. McGee
3728 Ballahack Road
Chesapeake, VA 23322

With Copy To: Hurst R. Hessey
Hessey & Hessey, P.A.
36 S. Charles St., Suite 2400
Baltimore, MD 21201

Each party shall have the right to designate a different address for the receipt of notices other than that set forth above, provided the party's new address is contained in a written notice given to the other party.

18. *Miscellaneous.*

(a) This Contract contains the final and entire agreement between the parties and neither they nor their agents should be bound by any terms, conditions or representations not herein written.

(b) Time shall be of the essence of this Contract.

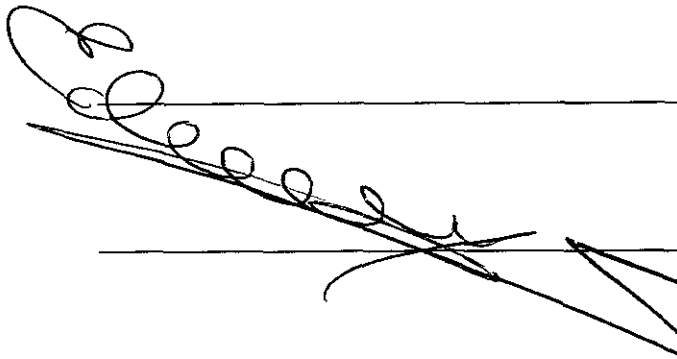
(c) The parties bind themselves, their heirs, personal representatives, successors and assigns to the faithful performance of this Contract.

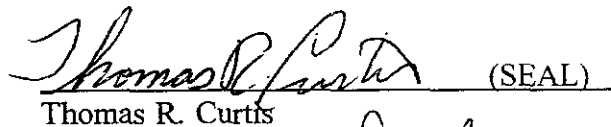
(d) The indemnities contained in paragraphs 8 and 16 and the provisions of paragraph 14, 16, and this subparagraph 18(d) shall survive settlement and the execution and delivery of the deed of the Property.

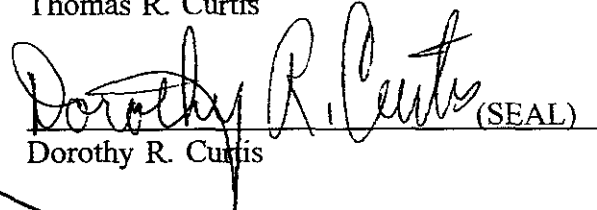
(e) This Contract shall be construed in accordance with the laws of the state of Maryland.

IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale and affixed their seal hereto on the date and year first above written.

WITNESS:

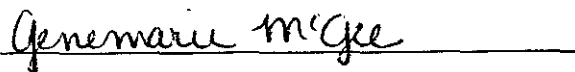


 (SEAL)
Thomas R. Curtis

 (SEAL)
Dorothy R. Curtis

(SEAL)
Gretchen K. Hundertmark, Minor

Sellers



 (SEAL)
Dennis G. McGee, Buyer

[F:\WPDMCGEE\CONDEP.912]

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #96-289-SPH
(Item 289)
15906 Falls Road
point of beginning SW 650'
+/- from c/l Falls Road, 2000's
from c/l Benson Mill Road
5th Election District
3rd Councilmanic
Legal Owner(s):

Dennis G. McGee and Thomas R. Curtis and Dorothy Curtis

Special Hearing: to combine 2 lots for the purposes of obtaining a building permit for single family residential unit construction

Hearing: Wednesday, March 6, 1996 at 10:00 a.m. in Rm. 106, County Office Building.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.

2/21/7 Feb. 15

C32105

CERTIFICATE OF PUBLICATION

TOWSON, MD.,

Feb. 16, 1996

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Feb. 15, 1996.

THE JEFFERSONIAN,

A. Henickson
LEGAL AD. - TOWSON

CERTIFICATE OF PUBLICATION

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #96-289-SPH
(Item 289)
15906 Falls Road
point of beginning SW 650'
+/- from c/l Falls Road, 2000's
from c/l Benson Mill Road
5th Election District
3rd Councilmanic
Legal Owner(s):

Dennis G. McGee and Thomas R. Curtis and Dorothy
2 lots for the purposes of obtaining a building permit for single family residential unit construction
Hearing: Wednesday, March 6, 1996 at 10:00 a.m. in Rm. 106, County Office Building.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.
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2/217 Feb. 15

C32105

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THE JEFFERSONIAN,

A. Henrichson
LEGAL AD. - TOWSON

IN RE: PETITION FOR SPECIAL HEARING
SW/S Falls Road, 2000' S of
the c/l of Benson Mill Road
(15906 Falls Road)
5th Election District
3rd Councilmanic District
Dennis G. McGee and
Thomas R. Curtis, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-289-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In what might apply be titled Chapter IV of the ongoing saga of Dennis G. McGee and 15906 Falls Road, this matter comes before me as a Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit to construct a single family residence on the subject property. The Petition is jointly filed by Dennis G. McGee, Owner/Contract Purchaser, and Thomas R. and Dorothy Curtis, Owners of one of the lots to be combined. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite hearing held for this case were Dennis G. McGee and his attorney, Hurst R. Hessey, Esquire. Also present were Thomas and Dorothy Curtis, and Kristen Forsyth, a representative of the valleys Planning Council (VPC), which supports the relief requested. There were no Protestants present.

Mr. McGee has been before this Office on several occasions relating to the subject property and the history of this site is well-documented. Originally, this property was part of a larger tract owned by Mr. Curtis' parents. Apparently, the elder Mr. & Mrs. Curtis acquired the site in the 1930s and originally owned approximately 14.62 acres. In 1971, Mrs. Curtis then a widow, conveyed 1.45 acres of the site to her son, Thomas R. Curtis.

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Date 3/15/96
By [Signature]

Mr. Curtis and his wife, Dorothy, ultimately improved the site with a single family dwelling which is their residence today. In 1973, Mrs. Curtis made a second conveyance. At that time, she transferred a small strip of land approximately .7 acres in area, to the Baltimore Gas and Electric Company (BGE). That transfer was for the purpose of providing that utility with acreage to construct a transmission line.

By 1979, Mrs. Curtis held approximately 12 acres total. In November, 1979, the Baltimore County Council adopted the R.C. zoning classification and comprehensively amended the Baltimore County Zoning Regulations (B.C.Z.R.). The property was thereafter zoned R.C. 2, a designation which continues to this date. Under that zoning classification, the 12 acres Mrs. Curtis then owned could be subdivided one time. That is, the R.C. zoning classification allows a single subdivision of a 12-acre tract, so as to permit two building lots, or two density units.

Mrs. Curtis passed away in 1983 and under the terms of her will, directed that each of her three children split the 12 acres. In compliance with the terms of the will, but contrary to the B.C.Z.R., the site was thereafter subdivided into three lots. One lot was deeded to George S. Kohler, a son, who subsequently developed that lot with a single family residence where he presently resides. A second lot was bequeathed to the aforementioned Thomas R. Curtis and Dorothy Curtis. This lot abuts the property Mr. & Mrs. Curtis previously acquired and improved. A third lot, containing approximately 4 acres, was left to another child, and following a series of transfers, was subsequently acquired by Mr. McGee.

In 1990, Mr. McGee came before then Deputy Zoning Commissioner Ann Nasterowicz, through a Petition for Special Hearing (Case No. 90-62-SPH), seeking to improve his property with a single family dwelling. Deputy

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ORDER RECEIVED FOR FILING
Date 3/15/96
By [Signature]

Commissioner Nasterowicz denied the request and outlined the history of the site. She noted that only two density units were allowed for the original 12 acre parcel and that Mr. Kohler had utilized one of those density units when he constructed his dwelling on his property. She also concluded that the subdivision by Mrs. Curtis' will was illegal under the B.C.Z.R. Moreover, in that Mr. & Mrs. Thomas Curtis were not parties to the Petition for Special Hearing, she reasoned that relief must be denied. On appeal, by Order of August 21, 1990, the County Board of Appeals agreed.

Rebuffed in his initial attempt to obtain relief, Mr. McGee tried a different approach in 1991. At that time, he came before the Board of Appeals on a Petition for Reclassification seeking a redesignation of the zoning for his property from R.C. 2 to R.C. 5. The purpose of this Petition was to enable Mr. McGee to construct a single family dwelling on his lot. The Board of Appeals in its written decision reviewed the history of the property and denied the relief requested.

Hoping that the third time would indeed be the charm, Mr. McGee returned with a Petition for Special Hearing before me in 1994. In that Petition, Mr. McGee attempted to utilize a right of subdivision from the .7 acre parcel conveyed to the Baltimore Gas and Electric Company by the elder Mrs. Curtis. In effect, Mr. McGee argued that a right of subdivision was available to him in that BGE had not utilized the .7 acre parcel for residential purposes. For reasons set forth in my opinion, I denied the Petition for Special Hearing. In a split decision, the Board of Appeals concurred.

Frustrated in these three attempts, Mr. McGee now tries again. Fortunately for him, he will now succeed. Mr. McGee has entered into a contract of sale with Thomas R. and Dorothy Curtis to purchase a portion

- 3 -

ORDER RECEIVED FOR FILING
Date 3/15/96
By [Signature]

of the 4 acres of property acquired by them under the terms of the Last Will and Testament of Mrs. Bessie Curtis. (See Petitioner's Exhibit 2) Specifically, Mr. McGee will acquire 2.544 acres. Coupled with his previous holdings, he will now own approximately 6.5 acres of the original 12 acre tract. Mr. & Mrs. Curtis will retain the remaining 1.45 acres of the land bequeathed to them, in addition to the original 1.45 acres on which their residence is located. More importantly, from Mr. McGee's perspective, it is agreed by and between the parties that Mr. McGee will acquire the single right of subdivision which remains available to the 12-acre tract. As noted above, Mr. Kohler previously utilized one right of subdivision to create his lot and erect a dwelling thereon. The second right of subdivision will be utilized on the original McGee property of 4 acres, coupled with his new acquisition of 2.544 acres. It is agreed by all parties that the balance of property bequeathed to Mr. & Mrs. Curtis and retained by them is "non-density". That is, that parcel cannot be used now or in the future to support any dwelling or right of subdivision.

Clearly, a grant of the special hearing relief will end this difficult episode in a fair and equitable manner. The utilization of the overall 12-acre tract will be in accordance with the B.C.Z.R. Two dwellings will be constructed on the gross acreage, one by Mr. Kohler, and one by Mr. McGee. Moreover, Mr. & Mrs. Curtis' home is exempt from consideration in this regard, in that their property was acquired prior to November, 1979. It is clear that a grant of the special hearing is consistent with the B.C.Z.R., as well as the use and characteristics of the surrounding neighborhood. In my judgment, a grant of the special hearing will not be detrimental to the health, safety or general welfare of the locale and should, therefore, be approved.

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ORDER RECEIVED FOR FILING
Date 3/15/96
By [Signature]

As a final issue, it is to be noted that Zoning Plans Advisory Committee (ZAC) comments were received from member agencies. Most of the comments were neutral; however, there was a recommendation from the Development Plans Review Division of the Department of Public Works regarding the proposed construction of Mr. McGee's dwelling and the means of vehicular access thereto. That comment shall be incorporated herein as a condition to the relief granted.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held and for the reasons set forth above, the relief requested in the Petition for Special Hearing shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of March, 1996 that the Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit to construct a single family residence on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- 2) Pursuant to Section 502.2 of the B.C.Z.R., a new deed incorporating a reference to this case and the restrictions and conditions set forth herein shall be recorded among the land records of Baltimore County within sixty (60) days of the date of this Order and a copy of the recorded deed shall be forwarded to the Zoning Commissioner for inclusion in the case file.
- 3) Compliance with the Zoning Plans Advisory Committee comment submitted by the Development Plans Review Division of the Department of Public Works dated February 20, 1996, a copy of which is attached hereto.

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ORDER RECEIVED FOR FILING
Date 3/15/96
By [Signature]

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

5) The balance of the property inherited by Thomas R. Curtis and retained by him, computed to be approximately 1.45 acres, shall be hereinafter considered a non-density parcel, and cannot be utilized to support further residential development.

LES:bjs

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 3/15/96
By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

March 18, 1996

(410) 887-4386

Hurst R. Hessey, Esquire
36 S. Charles Street, Suite 2400
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING
SW/S Falls Road, 2000' S of the c/l of Benson Mill Road
(15906 Falls Road)
5th Election District - 3rd Councilmanic District
Dennis McGee - Petitioner
Case No. 96-289-SPH

Dear Mr. Hessey:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Dennis G. McGee
3728 Ballahack Road, Chesapeake, Va. 23322

Edward C. Covahey, Jr., Esquire
Covahey & Boozer, 614 Bosley Avenue, Towson, Md. 21204

Mr. & Mrs. Thomas R. Curtis, 15902 Falls Road, Sparks, Md. 21152

Ms. Kristen Forsyth, VPC, P.O. Box 5402, Towson, Md. 21285-5402

People's Counsel; Case File

Printed with Soybean Ink
on Recycled Paper

Petition for Special Hearing to the Zoning Commissioner of Baltimore County

for the property located at 15906 Falls Road
which is presently zoned RC2

This Petition shall be filed with the Department of Permits & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

their request to combine 2 lots for the purpose of obtaining a building permit for single family residential unit construction.

SEE ATTACHED ADDENDUM

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. (Note: By Agreement, McGee will pay these expenses)

Contract Purchase/Lease

Legal Owner(s)

Dennis G. McGee

Signature

Thomas R. Curtis & Dorothy Curtis

Signature

3728 Ballahack Road

Chesapeake, Virginia 23322

City, Address and phone number of representative to be contacted

Hurst R. Hessey, Esquire (Atty. for McGee)

36 S. Charles Street, Suite 2400

Baltimore, MD 21201

City, Address and phone number of representative to be contacted

ESTIMATED LENGTH OF HEARING

Unsubstantiated for Hearing

the following date

ALL OTHER

REVIEWED BY: R.I. DATE: 1-30-96

ITEM 289

ORDER RECEIVED FOR FILING
Date 3/15/96
By [Signature]

96-289-SPH

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
W/S Falls Road, 2500' S of * ZONING COMMISSIONER
Benson Mill Road
(15906 Falls Road) * OF BALTIMORE COUNTY
5th Election District
3rd Councilmanic District * CASE NO.: 94-42-SPH

ADDENDUM TO PETITION

Petitioner, Dennis G. McGee, by his attorney, Hurst R. Hessey, respectfully submits this Addendum to the Petition for Special Hearing submitted jointly by him and Thomas Curtis and Dorothy Curtis, his wife, individually and on behalf of Gretchen Hundertmark, Minor (collectively, "Curtis").

Petitioner, Dennis G. McGee, owns a tract of land located in the 3rd Councilmanic District, 5th election district, Baltimore County, consisting of 4.00 acres, more or less, known generally as 15906 Falls Road (the "Property"). Curtis owns a contiguous lot of ground, all as more set forth on the Plat accompanying this Petition.

The history of the Property is somewhat complicated. The subject Property was part of a 12.00 acre tract (the "Tract") zoned R.C. 2 located off Falls Road. The Property consists of 4.00 acres which Petitioner purchased from Michael Lee ("Lee") by deed dated November 7, 1986. At the time of the purchase, Lee represented to Petitioner that the Property was a buildable lot, and Petitioner subsequently obtained all necessary financing for the construction of a home. However, upon application for building permit approval by the Zoning Office, he was advised that the subdivision of the 12.00 acre Tract into the three lots was an illegal subdivision, as the R.C.-2 classification permits subdividing into only two lots.

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In 1932, by deed dated March 15, 1932, the 12.00 acre Tract and an additional 2.00 acres, more or less, were purchased by Levi and Bessie Curtis. Subsequently, by deed dated May 6, 1971, Bessie A. Curtis, then a widow, transferred 1.451 acres of the 14.00 acres, more or less, to her son, Thomas Curtis and Dorothy R. Curtis, his wife. Thereafter, .7 acres of the remaining acreage was acquired by Baltimore Gas and Electric Company in 1973. After this conveyance to Baltimore Gas and Electric Company, there remained only the 12.00 acre Tract. Bessie Curtis passed away in February, 1983, and by will divided the Tract among her three children. On August 17, 1984, the three children filed a deed in lieu of partition in the Land Records of Baltimore County dividing the remaining 12.00 acre Tract illegally into three parcels. Since 1984, there has been no construction on any of the three parcels. One parcel was given to a daughter, Martha Kohler, who has since passed away. She left that parcel to Thomas Curtis' daughters. The second parcel was deeded to Thomas Curtis, the owner of an adjoining tract of land, not part of the 12 acre Tract, and the third parcel was deeded to Martha Kohler as Trustee for her brother, Harry Curtis. It is this third parcel (the "Property") that was subsequently sold in 1984 to Petitioner's predecessor in interest, Lee.

After failing to obtain a building permit for the Property, Petitioner filed a Petition for Special Hearing (case No.: 90-62-SPH) which essentially requested that the division of the Tract be resolved in such a way that would enable Petitioner to get his building permit. The Commissioner denied Petitioner's request, primarily due to the failure of Thomas Curtis to agree to transfer his interest in any existing density unit related to his land, and his failure to take any other action that would alleviate Petitioner's problem.

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Petitioner appealed the decision of the Commissioner to the County Board of Appeals. After a hearing before the Board on August 17, 1990, the Board denied the Petitioner's request, once again finding Thomas Curtis' action was necessary, but not forthcoming.

The Board further found, as did the Commissioner, that the division of the Tract into three lots was an illegal subdivision in violation of Section 1A01.3 of the B.C.Z.R. As a result, the Petitioner sought a change in the zoning of the Property from R.C.2 to R.C.5. The Board of Appeals denied this request.

Petitioner then sought to contract with BG&E for the purchase of the BG&E Lot, which contract was contingent upon (i) approval by the Zoning Commissioner combining the BG&E Lot with the Property and transferring the density unit theretofore belonging to the BG&E Lot. The Zoning Commissioner granted the relief requested by the Petitioner; however, the decision was overturned by the County Board of Appeals on appeal. Again, the Petitioner was thwarted.

The Petitioner's request relating to the BG&E Lot was opposed by the Valleys Planning Council ("VPC"). VPC suggested that the Petitioner had numerous other alternatives to the consolidation with the BG&E Lot, including (i) making a claim against Lee under Baltimore County Code, § 22-44, (ii) joining Thomas Curtis in a hearing before the Zoning Commissioner to compel transfer of the density unit, and (iii) otherwise getting Thomas Curtis to agree that McGee should be entitled to utilize the remaining density unit (and building permit) that remains available to the Tract.

A claim against Lee is impossible. Lee filed bankruptcy in the Middle District of Pennsylvania, Case No. 1-9-1691, and the debt is discharged. Compelling Thomas Curtis to transfer his rights in the Density Unit was twice attempted and twice rejected, as stated above.

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Consequently, item (iii) above is the only available avenue to redress the Petitioner, Dennis G. McGee.

In furtherance of item (iii) above, Dennis G. McGee has entered into a contract of sale ("Contract") for the purchase of approximately two acres owned by Curtis and the transfer of the Density Unit applicable thereto. The Contract is attached as Exhibit A. Pursuant to the Contract (and the recommendation of VPC), McGee and Curtis are jointly requesting the relief set forth in this Petition for Special Hearing.

Petitioner has spent considerable sums of money in relying on Lee's representations concerning the ability to build on the Property. The acquisition price of the Property was in excess of \$34,000.00, a cost clearly anticipating a buildable lot. Further, Petitioner spent thousands of dollars in legal fees, professional fees, surveying expenses and other expenses in attempting to obtain a building permit and securing financing. Without the ability to build on the Property, Petitioner will suffer a severe loss through no fault of his own. The Contract calls for McGee to spend an additional \$38,000 for the acquisition of a portion of the Curtis' lot, plus engineering expenses expected to exceed \$12,000.

Accordingly, the Petitioners, Dennis G. McGee and Curtis, request that their Petition for Special Hearing be granted.

Respectfully submitted,

Hurst R. Hessey
Hurst R. Hessey
Attorney for Petitioner,
Dennis G. McGee
Hessey & Hessey, P.A.
36 South Charles Street
Suite 2400
Baltimore, Maryland 21201
(410) 539-3300

(F:\WP51\MCGEE\ATP)

4

ITEM 289

ZONING
DESCRIPTION FOR
SPECIAL HEARING
FOR
DENNIS G. MCGEE
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

96-289-SPH

BEGINNING for the same at a point distant, South 45° 30' 20" West, 659 feet more or less and southerly, 2000 feet more or less from the intersection of the centerline of Maryland Route 25 (Falls Road) and Benson Mill Road, thence running the twelve (12) following courses, viz.:

- (1) South 44° 04' East, 232.5 feet more or less
- (2) South 45° 30' West, 190 feet
- (3) South 44° 30' East, 340.3 feet more or less
- (4) South 31° 05' 20" West, 74.8 feet
- (5) South 33° 40' 20" West, 271 feet
- (6) North 58° 19' 40" West, 30 feet
- (7) North 31° 49' 40" West, 550 feet
- (8) North 33° 39' 40" West, 370 feet
- (9) North 23° 39' 40" West, 45 feet more or less
- (10) North 47° 35' 20" East, 218 feet more or less
- (11) South 36° 09' 40" East, 327 feet, and
- (12) North 45° 30' 20" East, 158 feet to the place of beginning, containing 6.544 acres or 285,057 square feet of land more or less. Also known as No. 15906 and part of No. 15900 Falls Road.

NOTE: This description is for zoning purposes only and is not to be used for the conveyance of property.

ITEM 289

96-289-SPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 5th Date of Posting: _____
Posted for: Special Hearing
Petitioner: Mr. McGee and Curtis
Location of property: 15906 Falls Rd
Location of Sign: _____
Remarks: _____
Posted by: M. Hessey Date of return: _____
Number of Signs: _____

Post by: 2/20/96

CASE NUMBER: 96-289-SPH (Item 289)
15906 Falls Road
point of beginning SW 650' +/- from c/l Falls Road, 2000'S from c/l
Benson Mill Road
5th Election District - 3rd Councilmanic
Legal Owner: Dennis G. McGee and Thomas R. Curtis and Dorothy Curtis

Special Hearing to combine 2 lots for the purposes of obtaining a building permit for single family residential unit construction.

HEARING: WEDNESDAY, MARCH 6, 1996 at 10:00 a.m. in Room 106, County Office Building.

CERTIFICATE OF PUBLICATION

TOWSON, MD., Feb 16, 1996

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Feb 11, 1996.

THE JEFFERSONIAN,
A. Henrichson
LEGAL AD. - TOWSON

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

96-289-SPH
DATE: 1-30-96 ACCOUNT: 96-289-SPH
RECEIVED FROM: HESSEY
AMOUNT: \$ 135.00

FOR: SPECIAL HEARING (TWO LOTS)

VALIDATION ON SIGNATURE OF CASHIER
DATE: 2/20/96 PINK - ALLOC YELLOW - COUNTER



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be assessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 289 Petitioner: _____

Location: _____

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Hurst R. Hessey, Attorney for Petitioner

ADDRESS: 36 S. Charles Street, Suite 2400

Baltimore, MD 21201

PHONE NUMBER: (410) 539-3300



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 12, 1996

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-289-SPH (Item 289)

15906 Falls Road
point of beginning SW 650' +/- from c/l Falls Road, 2000'S from c/l Benson Mill Road
5th Election District - 3rd Councilmanic
Legal Owner: Dennis G. McGehee and Thomas R. Curtis and Dorothy Curtis

Special Hearing to combine 2 lots for the purposes of obtaining a building permit for single family residential unit construction.

HEARING: WEDNESDAY, MARCH 6, 1996 at 10:00 a.m. in Room 106, County Office Building.

Carl Jablon

Arnold Jablon
Director

cc: Hurst R. Husey, Esq.
Dennis G. McGehee
Thomas and Dorothy Curtis
Edward C. Covahay, Jr., Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 106, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3393.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 28, 1996

Edward C. Covahay, Jr., Esquire
Covahay & Booser, P.A.
614 Bosley Ave.
Towson, MD 21204

RE: Item No.: 289
Case No.: 96-289-SPH
Petitioner: D. G. McGee

Dear Mr. Covahay:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on January 30, 1996.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: Feb. 20, 1996
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Development Plans Review Division

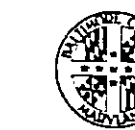
RE: Zoning Advisory Committee Meeting
for February 20, 1996
Item No. 289

The Development Plans Review Division has reviewed the subject zoning item. The means of access to the residential subdivision must follow the physical standards for a panhandle lot per Dept. of Public Works Standard Plate R-47, Detail "A" - a 10-inch thick driveway section (2-inch Bituminous Concrete over 8-inch Base Course) at a width of 12 feet.

A 100-year flood plain runs along the Indian Run property line. The Developer must not construct the rear of the building within 20 feet of the limits of the flood plain as established for the 100-year flood level with a 1 foot freeboard. See Plate 19D in the Baltimore County Design Manual, dated 1982 and adopted 1983.

RWB:sw

Baltimore County Government
Fire Department



700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 02/14/96

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF FEB. 12, 1996.

Item No.: SEE BELOW Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 286, 287, 288, 289, 290, 292 AND 293.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: February 12, 1996
Permits and Development
Management

FROM: Pat Keller, Director
Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning has no comments on the following petition(s):

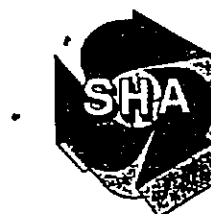
Item No. 289

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: *Jeffrey W. Long*
Division Chief: *Carol L. Lewis*

PK/JL

ITEM289/PZONE/ZAC1



Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Hal Kassoff
Administrator

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 289 (RT)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance onto MD/25 is acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Bob Small at 410-333-1350 if you have any questions. Thank you for the opportunity to review this item.

Very truly yours,

Bob Small
Ronald Burns, Chief
Engineering Access Permits
Division

BS

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free
Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

PETITION PROBLEMS

#286 -- MJK

1. Need attorney - legal owner is incorporated.

#287 -- JRF

1. Need typed or printed name of person signing for legal owner.
2. Need typed or printed title of person signing for legal owner.
3. Need authorization for person signing for legal owner.
4. Need telephone number for legal owner.
5. Need typed or printed name of person signing for contract purchaser.
6. Need typed or printed title of person signing for contract purchaser.
7. Need authorization of person signing for contract purchaser.

#289 -- RT

1. Need attorney's signature.

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: January 30, 1996

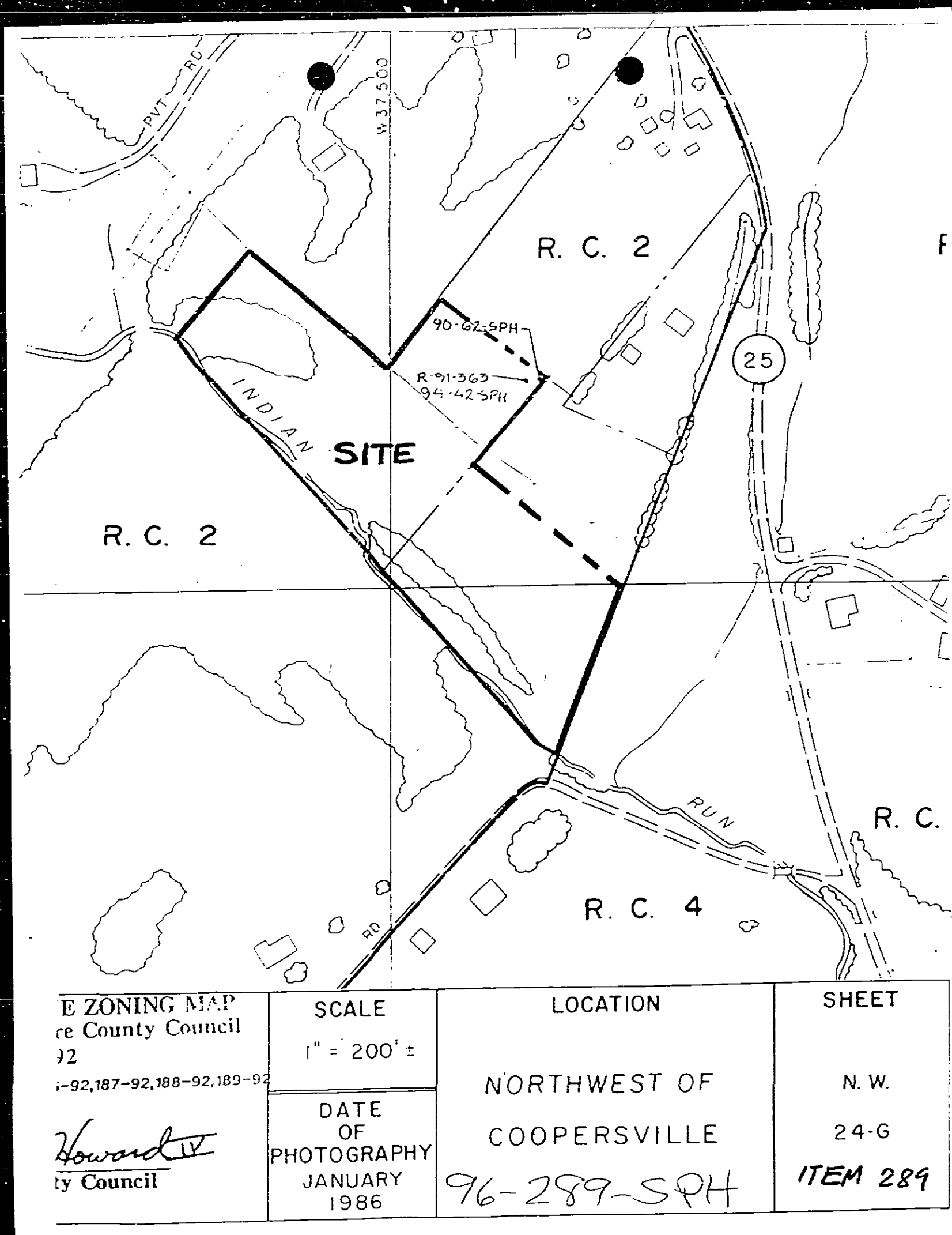
TO: Hearing Officer

FROM: Regulo Tanguilig
Planner I
Zoning Review, PDM

SUBJECT: Item #289
15906 Falls Road

RSD-10 to be submitted two weeks prior to hearing, per applicants.
Attached previous hearing case #90-62-SPH.

RT:scj



CONTRACT OF SALE

THIS CONTRACT OF SALE is dated DEC 10, 1995, between Thomas R. Curtis, Dorothy R. Curtis, and Gretchen K. Hundertmark, Minor, collectively, "Sellers", and Dennis G. McGee, "Buyer".

1. **Property.** Sellers bargain and sell to the Buyer and the Buyer purchases from the Sellers the fee simple property lying in Baltimore County, Maryland, containing two and one-half (2.5) acres of land, more or less, generally described as the westernmost or southwesternmost 250 feet of the Curtis Family Parcel Two, and being more particularly shown as the crosshatched portion on the Corrective Property Plan for Dennis G. McGee filed with Baltimore County DRC and attached as Exhibit A, together with all improvements thereon and all appurtenances thereto. The property shown on Exhibit A, together with its appurtenances and improvements, is hereinafter called the "Property." The "Proposed line of Division" as designated on Exhibit A, to the extent feasible upon determination by the Buyer's engineer, shall begin where it intersects the "line of division" approximately 250 feet east of the western boundary of the Property and shall be, to the extent feasible, perpendicular to the "line of division". It is understood and agreed by the parties that a final metes and bounds description of the Property has not yet been prepared. The Property conveyed shall also include all of the rights to the density unit that is presently available to either the Curtis Family Parcel Two or the adjacent lot owned by Buyer, under Baltimore County zoning regulations.

2. **Present Status of Title.** The parties acknowledge that title to the Property is presently held as a life estate in Thomas R. Curtis and Dorothy R. Curtis, his wife, and the survivor of them, with remainder to Gretchen K. Hundertmark, a minor, all pursuant to Deed dated October 29, 1984, and recorded among the Land Records of Baltimore County in Liber 6810, folio 224. The life tenants, Thomas R. Curtis and Dorothy R. Curtis failed to retain the power to dispose of the property in the said Deed.

3. **Purchase Price and Deposit.** The purchase price to be paid by the Buyer to the Seller for the Property is thirty-eight thousand dollars (\$38,000), which shall be paid (i) by a \$500.00 deposit upon execution of this Contract, to be retained by Edward C. Covahey, attorney for Sellers, and (ii) the balance of \$37,500.00 shall be paid in cash, certified check, or Title Company check at settlement. The deposit shall be returned by Buyer in the event any contingency set forth in this Contract fails.

4. **Buyer's Contingencies.** The Buyer's obligation to purchase the Property pursuant to this Contract is contingent upon the following, all or any of which may be waived by the Buyer (such waiver, however, must be in writing and signed by the Buyer).

(a) The Buyer obtaining, within six (6) months from the date of this Contract, all zoning reclassification, subdivision approvals, permits for water and sewer connections, public works agreements and other governmental permits and approvals which

are required as a prerequisite to the development of the Property into a single residential lot with a single family residence to be erected thereon (the "Intended Use").

(b) Gretchen K. Hundertmark executing or re-executing, as the case may be, upon the arrival at the age of 18, (and in any event, no later than March 30, 1996) (i) this Contract, or (ii) another document, reasonably satisfactory to Buyer, that creates in the said Gretchen Hundertmark the binding obligation to fulfill her obligations hereunder.

(c) The Buyer conducting to his satisfaction, within three (3) months from the date the contingency set forth in (a) above is satisfied, such tests and engineering studies of the Property as, in the reasonable exercise of the Buyer's judgment, are necessary to determine if there are any conditions in or about the Property which would render its development for the Intended Use uneconomic, and the Buyer, in the reasonable exercise of the Buyer's judgment, being satisfied that no such conditions exist.

(d) The Buyer obtaining a commitment for financing the sum of \$38,000, plus \$10,000.00 for subdivision engineering expenses, at a rate not higher than nine and one-half percent (9-1/2%) per annum, twenty-five year amortization, payable in full in three years, no points, within three (3) months from the date the contingency set forth in (a) above is satisfied.

Buyer shall have the right to extend (i) the six (6) month contingency periods referred to in subparagraph (a) above, and/or (ii) the three (3) month contingency in subparagraph (c) above upon written notice to Sellers, for an additional period of three (3) months, if at the expiration of the initial contingency period, there is then pending an administrative or legal proceeding which, in the reasonable exercise of the Buyer's judgment, has prevented the fulfillment of, or is necessary for the fulfillment of, that contingency.

5. **Zoning and Court Approvals.** The parties agree to join in and diligently prosecute a Petition for Special Hearing before the Zoning Commissioner of Baltimore County, for the purpose of (a) obtaining the Zoning Commissioner's approval for (i) consolidating the Property with an adjacent 4.0 acre lot, more or less, already owned by the Buyer, and (ii) the transfer of the density unit available to the Property to the resulting consolidated lot (the "Consolidated Lot"), and (b) ultimately, obtaining a building permit for a single family residence on the Consolidated Lot. Buyer shall bear all of the fees imposed by Baltimore County in filing and prosecuting the Petition for Special Hearing.

6. **Buyer's Obligations During Contingency Period.** During the initial contingency periods provided in paragraph 4 above, (or the extended contingency period should the Buyer elect to extend the contingency period referred to in subparagraph 4(a) or (c) above), the Buyer shall use reasonable diligence and act in good faith to seek fulfillment of the contingencies set forth in paragraph 4.

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7. **Failure of Buyer's Contingencies.** If during an initial or extended contingency period the Buyer shall determine, in the reasonable exercise of the Buyer's judgment, that it is unlikely that one or more of the contingencies provided for in paragraph 4 to which the period relates will be fulfilled within the then applicable contingency period, the Buyer shall have the right by written notice to Sellers to terminate this Contract prior to the expiration of the then applicable contingency period, and thereupon this Contract, with the exception of the indemnities contained in paragraphs 8 and 16, shall become null and void and of no further force and effect at law and in equity. In the event all of the contingencies set forth in paragraph 4 are not fulfilled within the applicable contingency periods, then the Buyer shall have the right by written notice to the Sellers to terminate this Contract, and this Contract, with the exception of the indemnities contained in paragraphs 8 and 16, shall become null and void and of no further force and effect at law and in equity. Upon any such failure, the deposit shall forthwith be refunded to Buyer.

8. **Buyer's Right of Entry and Inspections.** During the term of this Contract the Buyer, its agents, employees, contractors and engineers shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. To the extent that it is practical to do so, all such entries shall be made in such a manner as to minimize interference with Sellers' present use and occupancy of the Property. Within a reasonable time after such entries Buyer shall, to the extent practicable, restore the Property to its prior condition. The Buyer agrees to indemnify and save the Sellers harmless from all claims arising by reason of such entries. Should the contingencies set forth in this Agreement fail and the Buyer not purchase the Property, Buyer will restore the Property to substantially its condition prior to entry.

9. **Sellers' Participation.** Prior to settlement the Sellers shall promptly join in the execution of such plats and other documents, and participate in such administrative or judicial proceedings, as are in the reasonable exercise of the Buyer's judgment required for the fulfillment of the contingencies set forth in subparagraph 4(a) and (c).

10. **Settlement.** Settlement shall be held within thirty (30) days after the date of the receipt by the Sellers of written notice from the Buyer that the contingencies set forth in paragraph 4 have been fulfilled or waived. If the contingencies are fulfilled the Buyer will not unreasonably delay in sending written notice of the fulfillment to the Sellers. The written notice from the Buyer to the Sellers shall specify the date, time and place of settlement. In the event of the failure of Buyer to specify the date, time and place of settlement, the settlement shall be held at the offices of Hessey & Hessey, P.A., 36 S. Charles Street, Suite 2400, Baltimore, Maryland, 21201, at 10:00 a.m. on that day which is the thirtieth (30th) day after the last day of the latest contingency period set forth in Paragraph 4 of this Contract. If such day is a Saturday, Sunday or holiday, settlement shall be held on the next succeeding business day. At settlement, Buyer shall pay to Sellers the purchase price for the Property. Upon payment of the purchase money as above provided, the Sellers shall execute and deliver to the Buyer a deed for the Property containing covenants of special warranty and further

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assurances, which shall convey the Property to the Buyer. The title so conveyed shall be a good and merchantable fee simple title, both of record and in fact, free of all liens and encumbrances except those specifically accepted or consented to by Buyer pursuant to paragraph 11 hereof. Title shall be such as will be insurable by a licensed title insurance company at its standard rates.

11. **Title Report.** Within sixty (60) days from the date of this Contract, the Buyer shall obtain, at its expense, a title report covering the Property from a licensed title insurance company selected by the Buyer (the "Title Company"). The Buyer shall give written notice to the Sellers within the sixty day period listing those title exceptions which are not acceptable to the Buyer. The Sellers shall have twenty (20) days from the receipt of the Buyer's notice within which to determine whether to cure or remove those title exceptions which are not acceptable to the Buyer or to terminate this Contract. Should the Sellers elect to terminate this Contract, the Sellers shall do so by giving the Buyer written notice of the election within the twenty day period; otherwise the Sellers shall be deemed to have elected to cure or remove those title exceptions unacceptable to the Buyer. Should the Sellers elect to terminate this Contract, this Contract, with the exception of the indemnities contained in paragraphs 7 and 16, shall become null and void and of no further force and effect at law and in equity, and the deposit shall forthwith be returned to Buyer. Should the Sellers not elect to terminate this Contract, the Sellers shall be required to convey the Property to the Buyer at settlement, subject only to those title exceptions acceptable to Buyer or which have been created subsequent to the date of this Contract with the consent of the Buyer. Anything in this paragraph 11 to the contrary notwithstanding, Sellers shall not have the right to terminate this Contract because of any title exception which is a lien securing a debt or other obligation, or which has been created by the Sellers subsequent to the date of this Contract without the consent of the Buyer.

12. **Risk of Loss.** The Property shall be held at the risk of the Sellers until legal title has passed and possession has been given to Buyer. The Sellers shall immediately have all insurance policies on the Property endorsed to protect all parties hereto as their interests may appear and shall continue the insurance in full force during the term of this Contract. In the event that it shall be determined by the Buyer that the Property is inadequately insured by the Sellers, the Buyer shall have the right at the Buyer's own expense, to obtain additional insurance as may be satisfactory to the Buyer.

13. **Documentary Stamps and Transfer Taxes.** All documentary stamps and state and county transfer taxes, including any applicable agricultural transfer tax, payable upon the consideration hereunder to be paid by the Buyer relating to the conveyance of the Property to the Buyer shall be paid by the Buyer.

14. **Real Estate Taxes.** Real estate taxes and similar public charges against the Property which are payable on an annual basis (inc) ling district, sanitary commission or other benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the date hereof or subsequent

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ITEM 289

thereto) shall be adjusted between the parties as of the date of settlement and assumed and paid thereafter by the Buyer.

15. **Possession.** Possession of the Property shall be given to the Buyer at settlement.

16. **Real Estate Commissions.** The Sellers and the Buyer each warrant and represent to the other that it has not used the services of any broker, agent or finder who would be entitled to a commission on account of this Contract or the consummation of the transactions contemplated hereby and agrees to defend, indemnify and save the other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the indemnifying party has dealt in connection with this Contract.

17. **Notices.** All notices required or provided in this Contract, if hand delivered, shall be deemed to have been given and received on the date hand delivered to the party receiving the same. If the United States mails are used, notices shall be sent certified or registered mail, return receipt requested, postage prepaid and shall be deemed to have been given and received on the third business day from the date deposited in the United States mails addressed as follows:

To Sellers: C/O Mr. Thomas Curtis
15902 Falls Road
Sparks, MD 21152

With Copy To: Edward C. Covahey, Jr.
614 Bosley Avenue
Towson, MD 21204

To Buyer: Dennis G. McGee
3728 Ballahack Road
Chesapeake, VA 23322

With Copy To: Hurst R. Hessey
Hessey & Hessey, P.A.
36 S. Charles St., Suite 2400
Baltimore, MD 21201

Each party shall have the right to designate a different address for the receipt of notices other than that set forth above, provided the party's new address is contained in a written notice given to the other party.

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18. Miscellaneous.

(a) This Contract contains the final and entire agreement between the parties and neither they nor their agents should be bound by any terms, conditions or representations not herein written.

(b) Time shall be of the essence of this Contract.

(c) The parties bind themselves, their heirs, personal representatives, successors and assigns to the faithful performance of this Contract.

(d) The indemnities contained in paragraphs 8 and 16 and the provisions of paragraph 14, 16, and this subparagraph 18(d) shall survive settlement and the execution and delivery of the deed of the Property.

(e) This Contract shall be construed in accordance with the laws of the state of Maryland.

IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale and affixed their seal hereto on the date and year first above written.

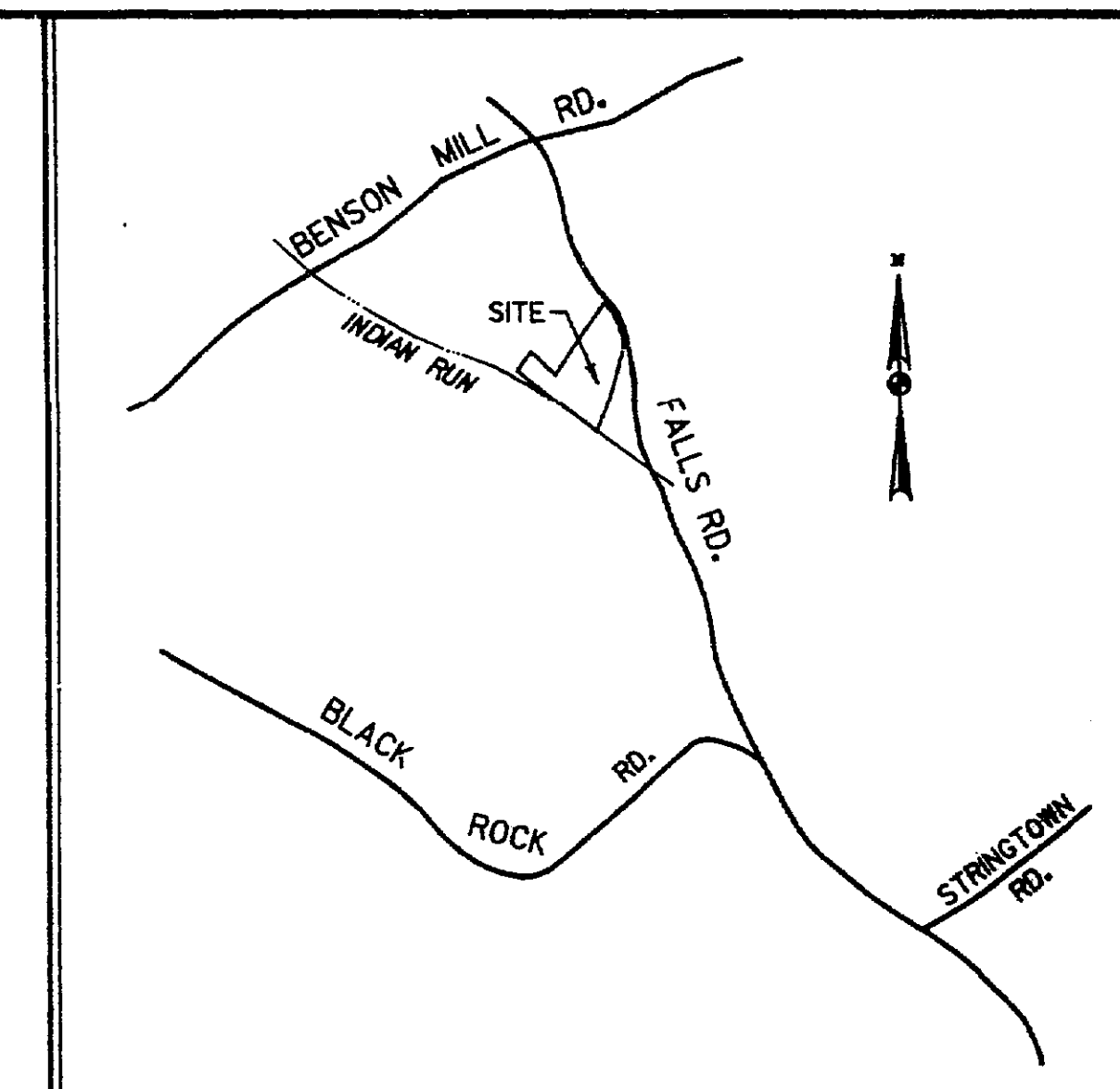
WITNESS:

Thomas R. Curtis (SEAL)
Thomas R. Curtis
Dorothy R. Curtis (SEAL)
Dorothy R. Curtis
Gretchen K. Hundertmark, Minor (SEAL)
Gretchen K. Hundertmark, Minor
Dennis G. McGee (SEAL)
Dennis G. McGee, Buyer

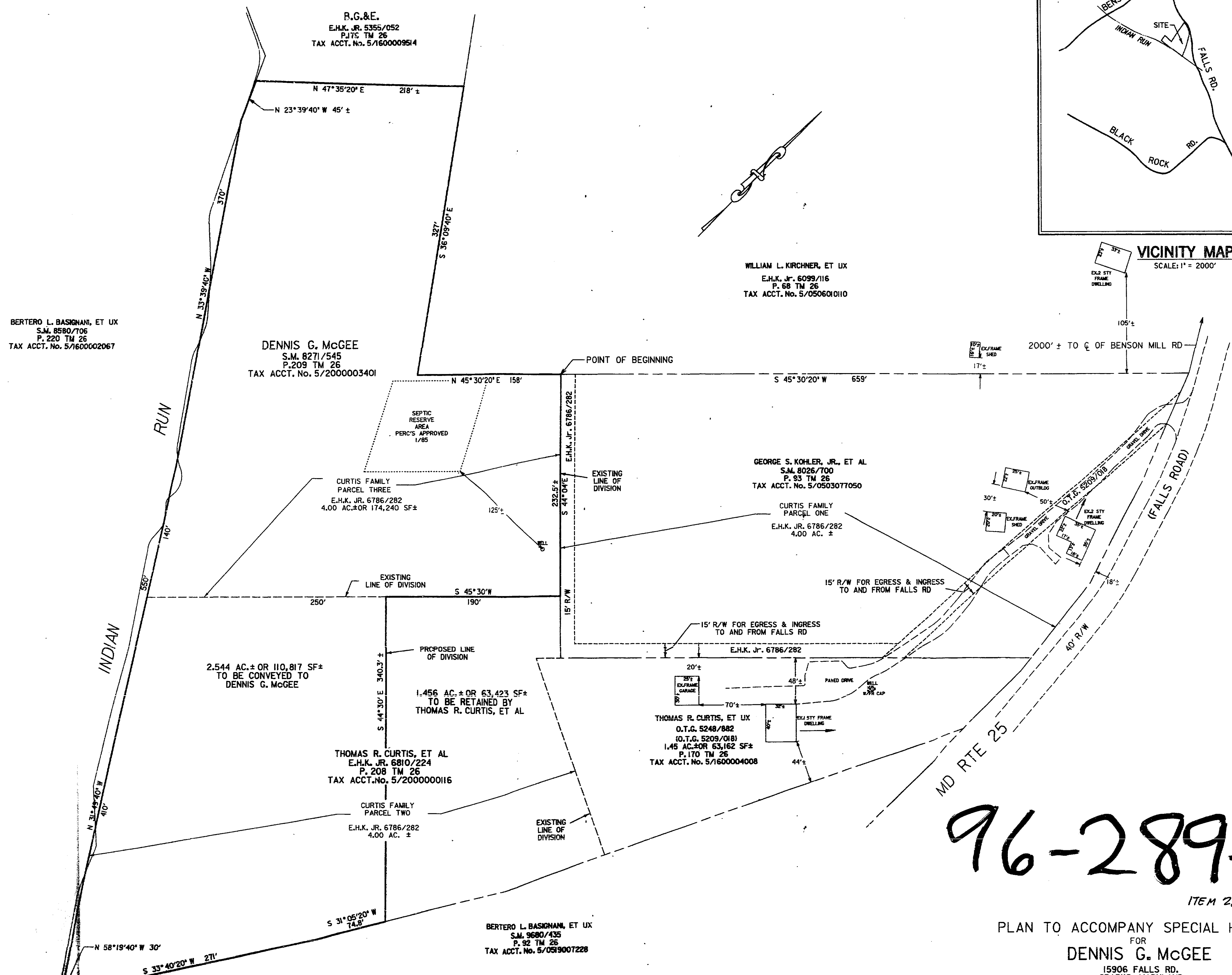
(F:\WP6\MCGEE\CONDOR 912)

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ITEM 289



VICINITY MAP
SCALE: 1" = 2000'



96-289-SPH

ITEM 289

PLAN TO ACCOMPANY SPECIAL HEARING
FOR
DENNIS G. MCGEE

15906 FALLS RD.
SPARKS, MARYLAND
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MD.

SCALE: 1" = 50'

DATE: JAN. 15, 1996

